No. 18-489

In the Supreme Court of the United States

BRADLEY WESTON TAGGART, PETITIONER

v.

SHELLEY A. LORENZEN, ET AL.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JOINT APPENDIX

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PETITION FOR A WRIT OF CERTIORARI FILED: OCTOBER 15, 2018
CERTIORARI GRANTED: JANUARY 4, 2019

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The following opinions, decisions, judgments, and transcripts have been omitted in printing the joint appendix because they already appear on the following pages in the appendix to the petition for a writ of certiorari or the supplemental appendix to the brief in opposition:

Appendix A: Court of appeals opinion (Apr. 23, 2018) 1a

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Supp. App. B: Bankruptcy court opinion denying sanctions (Jan. 23, 2012) 12a

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 16-35402

In re BRADLEY WESTON TAGGART,
Debtor,

SHELLEY A. LORENZEN, Executor of Estate of Stuart Brown; TERRY W. EMMERT; KEITH JEHNKE; SHERWOOD PARK BUSINESS CENTER, LLC,
Appellants,

v.

BRADLEY WESTON TAGGART,
Appellee.

No. 16-60032

In re BRADLEY WESTON TAGGART,
Debtor,

BRADLEY WESTON TAGGART,
Appellant,

v.

SHELLEY A. LORENZEN, Executor of Estate of Stuart Brown; TERRY W. EMMERT; KEITH JEHNKE; SHERWOOD PARK BUSINESS

CENTER, LLC,
Appellees.

No. 16-60033

In re BRADLEY WESTON TAGGART,
Debtor,

BRADLEY WESTON TAGGART,
Appellant,

v.

TERRY W. EMMERT; KEITH JEHNKE;
SHERWOOD PARK BUSINESS CENTER, LLC;
SHELLEY A. LORENZEN, Executor of Estate of
Stuart Brown
Appellees.

No. 16-60039

In re BRADLEY WESTON TAGGART,
Debtor,

SHELLEY A. LORENZEN, Executor of Estate of
Stuart Brown,
Appellant,

v.

BRADLEY WESTON TAGGART,
Appellee.

No. 16-60040

In re BRADLEY WESTON TAGGART,
Debtor,

TERRY W. EMMERT; KEITH JEHNKE;
SHERWOOD PARK BUSINESS CENTER, LLC,
Appellants,

v.

BRADLEY WESTON TAGGART,
Appellee.

No. 16-60042

In re BRADLEY WESTON TAGGART,
Debtor,

SHELLEY A. LORENZEN, Executor of Estate of
Stuart Brown,
Appellant,

v.

BRADLEY WESTON TAGGART,
Appellee.

No. 16-60043

In re BRADLEY WESTON TAGGART,
Debtor,

TERRY W. EMMERT; KEITH JEHNKE;
SHERWOOD PARK BUSINESS CENTER, LLC,
Appellants,

v.

BRADLEY WESTON TAGGART,
Appellee.

DOCKET ENTRIES

DATE	NO.	PROCEEDINGS
05/05/2016	1	DOCKETED CAUSE AND ENTERED APPEARANCES OF COUNSEL. SEND MQ: Yes. Setting schedule as follows: Fee due from Appellant Bradley Weston Taggart on 04/26/2016. Mediation Questionnaire due on 05/12/2016. Appellant Bradley Weston Taggart opening brief due 08/04/2016. Appellees Terry W. Emmert, Keith Jehnke, Shelley A. Lorenzen and Sherwood Park Business Center, LLC answering brief due

		09/06/2016. Appellant's optional reply brief is due 14 days after service of the answering brief. [9965524] (JN) [Entered: 05/05/2016 10:48 AM]
05/05/2016	2	Filed certificate of record on appeal. RT filed in DC: Not Applicable - BAP Appeal. [9965530] (JN) [Entered: 05/05/2016 10:50 AM]
		* * * * *
05/25/2016	10	Filed (ECF) - Bradley Weston Taggart and Appellant Bradley Weston Taggart Motion to consolidate cases 16-60032. 16-60033, 16-60039. 16-60040, 16-35402. Date of service: 05/25/2016. [9990756] [16-60032] (Berman, John) [Entered: 05/25/2016 12:23 PM]
05/26/2016	11	DOCKETED CAUSE AND ENTERED APPEARANCES OF COUNSEL ON CROSS APPEAL. SEND MQ: Yes. Setting cross-appeal briefing schedule as follows: Mediation Questionnaire due on 06/02/2016. First cross appeal brief due 08/05/2016 for Bradley Weston Taggart. Second brief on cross appeal due 09/06/2016 for Terry W. Emmert, Keith Jehnke, Shelley A. Lorenzen and Sherwood Park Business Center, LLC. Third brief on cross appeal due 10/06/2016 for

		Bradley Weston Taggart . Optional reply brief on cross appeal is due 14 days from service of third brief on cross appeal. [9991975] [16-60043, 16-60032, 16-60042] (BG) [Entered: 05/26/2016 09:33 AM]
06/16/2016	12	Filed clerk order (Deputy Clerk: SM):Appellant Bradley Weston Taggart's motion to consolidate Appeal Nos. 16-60032, 16-60033, 16-60042, 16-60039, 16-60043 and 16-60040 (Docket No. [10]) is granted. The briefing schedule established on May 26, 2016 (Docket No. [11]) shall govern these consolidated appeals. Case No. 16-35402 will be assigned to the same panel that considers the merits of the above cases, but briefed separately. Furthermore, appellant Shelley A. Lorenzen is reminded of her obligation to pay the fees and submit the mediation questionnaires in Case Nos.16-60042 and 16-60039. [10017087] [16-60032, 16-60042, 16-60043, 16-60033, 16-60039, 16-60040, 16-35402] (WL) [Entered: 06/16/2016 09:27 AM]
06/22/2016	13	Filed (ECF) Appellee Shelley A. Lorenzen in 16-60032, 16-60033 motion for reconsideration of non-dispositive Clerk Order of 06/16/2016. Date of service: 06/22/2016.

[10024595] [16-60032, 16-60033, 16-60039, 16-60040, 16-60042, 16-60043] (Streinz, James) [Entered: 06/22/2016 10:11 AM]

06/30/2016 14 Filed clerk order (Deputy Clerk: SM):Appellee Shelley A. Lorenzen's motion for reconsideration (Docket No. [13]) of the Court's June 16, 2016 order (Docket No. [12]) is granted. Case No. 16-35402 shall be consolidated with the above appeals for briefing. The briefing schedule established on May 26, 2016 (Docket No. [11]) shall govern these consolidated appeals. Furthermore, Shelley Lorenzen is reminded of her obligation to pay the fees in Case No. 16-60039. [10034759] [16-60032, 16-60033, 16-60039, 16-60040, 16-60042, 16-60043, 16-35402] --[COURT UPDATE: To replace PDF: resent NDA - 06/30/2016 by HH] (WL) [Entered: 06/30/2016 09:20 AM]

* * * * *

07/20/2016 17 Submitted (ECF) First Brief on Cross-Appeal for review. Submitted by Appellant Bradley Weston Taggart in 16-60032, 16-60033. Date of service: 07/20/2016. [10056204] [16-60032, 16-35402, 16-60033, 16-60039, 16-60040, 16-60042, 16-

60043]--[COURT UPDATE: Attached corrected brief and updated docket text to reflect content of filing. 07/21/2016 by SLM] (Berman, John) [Entered: 07/20/2016 11:04 AM]

07/20/2016 18 Submitted (ECF) excerpts of record. Submitted by Appellant Bradley Weston Taggart in 16-60032, 16-60033. Date of service: 07/20/2016. [10056220] [16-60032, 16-35402, 16-60033, 16-60039, 16-60040, 16-60042, 16-60043]--[COURT UPDATE: Attached corrected excerpts of record.. 07/21/2016 by SLM] (Berman, John) [Entered: 07/20/2016 11:13 AM]

07/21/2016 19 Filed clerk order: The first brief on cross-appeal [17] submitted by Bradley Weston Taggart is filed. Within 7 days of the filing of this order, filer is ordered to file 7 copies of the brief in paper format, accompanied by certification, attached to the end of each copy of the brief, that the brief is identical to the version submitted electronically. Cover color: blue. The paper copies shall be printed from the PDF version of the brief created from the word processing application, not from PACER or Appellate CM/ECF. The Court has reviewed

		the excerpts of record [18] submitted by Bradley Weston Taggart. Within 7 days of this order, filer is ordered to file 4 copies of the excerpts in paper format, with a white cover. The paper copies must be in the format described in 9th Circuit Rule 30-1.6. [10058607] [16-60032, 16-35402, 16-60033, 16-60039, 16-60040, 16-60042, 16-60043] (KT) [Entered: 07/21/2016 02:45 PM]
		* * * * *
10/06/2016	29	Submitted (ECF) Second Brief on Cross-Appeal for review. Submitted by Appellee Shelley A. Lorenzen in 16-60032, Appellant Shelley A. Lorenzen in 16-35402, 16-60033, 16-60039, 16-60042. Date of service: 10/06/2016. [10152285] [16-60032, 16-35402, 16-60033, 16-60039, 16-60040, 16-60042, 16-60043]--[COURT UPDATE: Attached corrected brief. 10/07/2016 by SLM] (Schroer, Janet) [Entered: 10/06/2016 04:59 PM]
10/06/2016	30	Submitted (ECF) Second Brief on Cross-Appeal for review. Submitted by Appellants Terry W. Emmert, Keith Jehnke and Sherwood Park Business Center, LLC in 16-35402, Appellees Terry W. Emmert, Keith Jehnke and Sherwood

		Park Business Center, LLC in 16-60032, 16-60033, 16-60040, 16-60043. Date of service: 10/06/2016. [10152374] [16-60042, 16-35402, 16-60032, 16-60033, 16-60039, 16-60040, 16-60043]--[COURT UPDATE: Updated docket text to reflect content of filing. 10/07/2016 by SLM] (McMilan, Hollis) [Entered: 10/06/2016 11:53 PM]
10/07/2016	31	Submitted (ECF) supplemental excerpts of record. Submitted by Appellee Shelley A. Lorenzen in 16-60032, Appellant Shelley A. Lorenzen in 16-35402, 16-60033, 16-60039, 16-60042. Date of service: 10/07/2016. [10153431] [16-60032, 16-35402, 16-60033, 16-60039, 16-60040, 16-60042, 16-60043]--[COURT UPDATE: Attached corrected excerpts of record. 10/07/2016 by SLM] (Schroer, Janet) [Entered: 10/07/2016 02:20 PM]
10/07/2016	32	Filed clerk order: The second brief on cross-appeal [30] submitted by Terry W. Emmert, et al. is filed. Within 7 days of the filing of this order, filer is ordered to file 7 copies of the brief in paper format, accompanied by certification, attached to the end of each copy of the brief,

		that the brief is identical to the version submitted electronically. Cover color: red. The paper copies shall be printed from the PDF version of the brief created from the word processing application, not from PACER or Appellate CM/ECF. [10153557] [16-60032, 16-35402, 16-60039, 16-60040, 16-60042, 16-60043, 16-60033] (KT) [Entered: 10/07/2016 02:49 PM]
10/07/2016	33	Filed clerk order: The second brief on cross-appeal [29] submitted by Shelley A. Lorenzen is filed. Within 7 days of the filing of this order, filer is ordered to file 7 copies of the brief in paper format, accompanied by certification, attached to the end of each copy of the brief, that the brief is identical to the version submitted electronically. Cover color: red. The paper copies shall be printed from the PDF version of the brief created from the word processing application, not from PACER or Appellate CM/ECF. The Court has reviewed the supplemental excerpts of record [31] submitted by Shelley A. Lorenzen. Within 7 days of this order, filer is ordered to file 4 copies of the excerpts in paper format, with a white cover. The paper copies must be in

		the format described in 9th Circuit Rule 30-1.6. [10153880] [16-60032, 16-35402, 16-60039, 16-60040, 16-60042, 16-60043, 16-60033] (KT) [Entered: 10/07/2016 04:06 PM]
		* * * * *
11/05/2016	37	Submitted (ECF) Third Brief on Cross-Appeal for review. Submitted by - Bradley Weston Taggart and Appellant Bradley Weston Taggart in 16-60032, - Bradley Weston Taggart in 16-35402, 16-60033, 16-60039, 16-60040, 16-60042, 16-60043. Date of service: 11/05/2016. [10187521] [16-60032, 16-35402, 16-60033, 16-60039, 16-60040, 16-60042, 16-60043]--[COURT UPDATE: Updated docket text to reflect content of filing. 11/07/2016 by LA] (Berman, John) [Entered: 11/05/2016 02:18 PM]
11/07/2016	38	Filed clerk order: The third brief on cross-appeal [37] submitted by Bradley Weston Taggart is filed. Within 7 days of the filing of this order, filer is ordered to file 7 copies of the brief in paper format, accompanied by certification, attached to the end of each copy of the brief, that the brief is identical to the version submitted electronically.

Cover color: yellow. The paper copies shall be printed from the PDF version of the brief created from the word processing application, not from PACER or Appellate CM/ECF. [10189143] [16-60032, 16-35402, 16-60033, 16-60039, 16-60040, 16-60042, 16-60043] (LA) [Entered: 11/07/2016 03:37 PM]

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11/29/2016	44	Submitted (ECF) Cross-Appeal Reply Brief for review. Submitted by Appellee Shelley A. Lorenzen in 16-60032, Appellant Shelley A. Lorenzen in 16-35402, 16-60033, 16-60039, 16-60042. Date of service: 11/29/2016. [10214020] [16-60032, 16-35402, 16-60033, 16-60039, 16-60040, 16-60042, 16-60043] (Schroer, Janet) [Entered: 11/29/2016 01:58 PM]
11/29/2016	45	Filed clerk order: The cross-appeal reply brief [44] submitted by Shelley A. Lorenzen is filed. Within 7 days of the filing of this order, filer is ordered to file 7 copies of the brief in paper format, accompanied by certification, attached to the end of each copy of the brief, that the brief is identical to the version submitted electronically. Cover color: gray. The paper copies shall be

printed from the PDF version of the brief created from the word processing application, not from PACER or Appellate CM/ECF. [10214694] [16-60032, 16-35402, 16-60033, 16-60039, 16-60040, 16-60042, 16-60043] (LA) [Entered: 11/29/2016 05:16 PM]

* * * * *

12/16/2016	49	Submitted (ECF) Cross-Appeal Reply Brief for review. Submitted by Appellees Terry W. Emmert, Keith Jehnke and Sherwood Park Business Center, LLC in 16-60032, 16-60033, Appellants Terry W. Emmert, Keith Jehnke and Sherwood Park Business Center, LLC in 16-35402, 16-60040, 16-60043. Date of service: 12/16/2016. [10239211] [16-60032, 16-35402, 16-60033, 16-60039, 16-60040, 16-60042, 16-60043]-[COURT ENTERED FILING to replace incorrect entry [47].] (LA) [Entered: 12/19/2016 04:48 PM]
12/19/2016	50	Filed clerk order: The cross-appeal reply brief [49] submitted by Terry W. Emmert, et al. is filed. Within 7 days of the filing of this order, filer is ordered to file 7 copies of the brief in paper format, accompanied by certification, attached to the end

of each copy of the brief, that the brief is identical to the version submitted electronically. Cover color: gray. The paper copies shall be printed from the PDF version of the brief created from the word processing application, not from PACER or Appellate CM/ECF. [10239214] [16-60032, 16-35402, 16-60033, 16-60039, 16-60040, 16-60042, 16-60043] (LA) [Entered: 12/19/2016 04:50 PM]

* * * * *

09/29/2017 61 Filed (ECF) Appellant Shelley A. Lorenzen in 16-35402, Appellee Shelley A. Lorenzen in 16-60032, 16-60033, 16-60039, 16-60042 citation of supplemental authorities. Date of service: 09/29/2017. [10600051] [16-35402, 16-60032, 16-60033, 16-60039, 16-60040, 16-60042, 16-60043] (Schroer, Janet) [Entered: 09/29/2017 02:18 PM]

10/02/2017 62 Filed (ECF) Appellants Terry W. Emmert, Keith Jehnke and Sherwood Park Business Center, LLC in 16-35402, Appellees Terry W. Emmert, Keith Jehnke and Sherwood Park Business Center, LLC in 16-60032, 16-60033, 16-60040, 16-60043 citation of supplemental authorities. Date of service:

		10/02/2017. [10601302] [16-35402, 16-60032, 16-60033, 16-60039, 16-60040, 16-60042, 16-60043] (McMilan, Hollis) [Entered: 10/02/2017 11:02 AM]
10/03/2017	63	ARGUED AND SUBMITTED TO EDWARD LEAVY, RICHARD A. PAEZ and CARLOS T. BEA. [10604484] [16-35402, 16-60032, 16-60033, 16-60039, 16-60040, 16-60042, 16-60043] (KAD) [Entered: 10/03/2017 03:42 PM]
10/03/2017	64	Filed Audio recording of oral argument. **Note:** Video recordings of public argument calendars are available on the Court's website, at http://www.ca9.uscourts.gov/media/ [10606115] [16-35402, 16-60032, 16-60033, 16-60039, 16-60040, 16-60042, 16-60043] (KM) [Entered: 10/04/2017 02:43 PM]

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10/05/2017	66	Filed (ECF) Appellant Bradley Weston Taggart in 16-60032, 16-60033 Motion to file supplemental excerpts of record. Date of service: 10/05/2017. [10607417] [16-60043, 16-35402, 16-60032, 16-60033, 16-60039, 16-60040, 16-60042]--[COURT UPDATE: Removed

		PDF of excerpts. Resubmitted using correct ECF filing type (see entry [67]). 10/05/2017 by RY] (Berman, John) [Entered: 10/05/2017 11:34 AM]
10/05/2017	67	Submitted (ECF) supplemental excerpts of record. Submitted by Appellee Bradley Weston Taggart in 16-35402, Appellant Bradley Weston Taggart in 16-60032, 16-60033, 16-60039, 16-60040, 16-60042, 16-60043. Date of service: 10/05/2017. [10607492] [16-35402, 16-60032, 16-60033, 16-60039, 16-60040, 16-60042, 16-60043]--[COURT ENTERED FILING to correct entry [66].] (RY) [Entered: 10/05/2017 11:56 AM]
04/16/2018	68	Filed order (EDWARD LEAVY, RICHARD A. PAEZ and CARLOS T. BEA): Appellant Bradley Weston Taggart's motion to file supplemental excerpts of record is GRANTED. [10837808] [16-35402, 16-60032, 16-60033, 16-60039, 16-60040, 16-60042, 16-60043] (AF) [Entered: 04/16/2018 11:19 AM]
		* * * * *
04/23/2018	70	FILED OPINION (EDWARD LEAVY, RICHARD A. PAEZ and CARLOS T. BEA) AFFIRMED. Judge: CTB Authoring. FILED

		AND ENTERED JUDGMENT. [10845887] [16-35402, 16-60032, 16-60033, 16-60039, 16-60040, 16-60042, 16-60043] (RMM) [Entered: 04/23/2018 06:59 AM]
		* * * * *
06/06/2018	78	Filed (ECF) Appellee Bradley Weston Taggart in 16-35402, Appellant Bradley Weston Taggart in 16-60032, 16-60033, 16-60039, 16-60040, 16-60042, 16-60043 petition for panel rehearing and petition for rehearing en banc (from 04/23/2018 opinion). Date of service: 06/06/2018. [10898287] [16-35402, 16-60032, 16-60033, 16-60039, 16-60040, 16-60042, 16-60043] (Geyser, Daniel) [Entered: 06/06/2018 09:52 AM]
06/11/2018	79	Submitted (ECF) Amicus brief for review and filed Motion to become amicus curiae. Submitted by The Honorable Eugene Wedoff (ret.), Professor Jack F. Williams, Professor Margaret Howard, and Adjunct Professor David R. Kuney. Date of service: 06/11/2018. [10903194] [16-35402, 16-60032, 16-60033, 16-60039, 16-60040, 16-60042, 16-60043] (Kuney, David) [Entered: 06/11/2018 09:02 AM]
		* * * * *

06/13/2018	82	Submitted (ECF) Amicus brief for review and filed Motion to become amicus curiae. Submitted by Prof. M. Jonathan Hayes. Date of service: 06/13/2018. [10908071] [16-60032, 16-35402, 16-60033, 16-60039, 16-60040, 16-60042, 16-60043] (Hayes, M.) [Entered: 06/13/2018 05:32 PM]
		* * * * *
06/18/2018	84	Submitted (ECF) Amicus brief for review and filed Motion to become amicus curiae. Submitted by National Consumer Bankruptcy Rights Center and National Association of Consumer Bankruptcy Attorneys. Date of service: 06/18/2018. [10912813] [16-60032, 16-35402, 16-60033, 16-60039, 16-60040, 16-60042, 16-60043]--[COURT UPDATE: Removed notice of appearance (unnecessary for amicus parties). 06/18/2018 by SLM] (Twomey, Tara) [Entered: 06/18/2018 03:18 PM]
		* * * * *
06/25/2018	86	Filed (ECF) Appellee Bradley Weston Taggart in 16-35402, Appellant Bradley Weston Taggart in 16-60032, 16-60033, 16-60039, 16-60040, 16-60042, 16-60043 citation of supplemental authorities. Date of

		service: 06/25/2018. [10921728] [16-35402, 16-60032, 16-60033, 16-60039, 16-60040, 16-60042, 16-60043] (Geyser, Daniel) [Entered: 06/25/2018 08:59 PM]
07/26/2018	87	Filed (ECF) Appellant Shelley A. Lorenzen in 16-35402, Appellee Shelley A. Lorenzen in 16-60032, 16-60033, 16-60039, 16-60042 citation of supplemental authorities. Date of service: 07/26/2018. [10956531] [16-35402, 16-60032, 16-60033, 16-60039, 16-60040, 16-60042, 16-60043] (Streinz, James) [Entered: 07/26/2018 02:26 PM]
09/07/2018	88	Filed order (EDWARD LEAVY, RICHARD A. PAEZ and CARLOS T. BEA): The panel has voted to grant each amicus curiae motion. The motions for leave to file amici curiae briefs are GRANTED. The panel has voted to deny Appellee's petition for panel rehearing. The panel has also voted to deny Appellee's petition for rehearing en banc. The full court has been advised of the petition for rehearing en banc and no judge of the court has requested a vote on en banc rehearing. See Fed. R. App. P. 35(f). The petition for panel rehearing and the petition for rehearing en banc are DENIED. [11003998] [16-35402,

		16-60032, 16-60033, 16-60039, 16-60040, 16-60042, 16-60043] (AF) [Entered: 09/07/2018 09:06 AM]
		* * * * *
09/17/2018	92	MANDATE ISSUED.(EL, RAP and CTB) Costs taxed against Appellant in the amount of $65.20 (dkt #68), $56.00 (dkt#72). [11013198] [16-35402, 16-60032, 16-60033, 16-60039, 16-60040, 16-60042, 16-60043] (CW) [Entered: 09/17/2018 09:09 AM]
09/17/2018	93	AMENDED MANDATE ISSUED. EL, RAP and CTB to correct costs awarded - Costs are taxed against Taggart [11013398] [16-35402, 16-60032, 16-60033, 16-60039, 16-60040, 16-60042, 16-60043] (CW) [Entered: 09/17/2018 10:07 AM]

UNITED STATES BANKRUPTCY APPELLATE PANEL OF THE NINTH CIRCUIT

BAP No. OR-15-1119-JuKiF
BAP No. OR-15-1158-JuKiF

In re: BRADLEY WESTON TAGGART,
Debtor.

TERRY W. EMMERT; KEITH JEHNKE; SHERWOOD PARK BUSINESS CENTER, LLC; SHELLEY A. LORENZEN, Executor of the Estate of Stuart Brown,
Appellants,

v.

BRADLEY WESTON TAGGART,
Appellee.

DOCKET ENTRIES

DATE	NO.	PROCEEDINGS
04/16/2015	1	Received notice of appeal filed in Bankruptcy Court on 04/13/2015, and copy of order on appeal. (PI) [Entered: 04/17/2015 04:31 PM]
		* * * * *
05/15/2015	5	Received from Bankruptcy Court copy of Appellant's DOR & SOI

		filed in Bk. Ct. 04/27/2015. (PI) [Entered: 05/15/2015 04:22 PM]
		* * * * *
05/15/2015	7	Received from Bankruptcy Court copy of Appellee's DOR filed in Bk. Ct. 05/04/2015. (PI) [Entered: 05/15/2015 04:34 PM]
		* * * * *
06/11/2015	10	Received from Bankruptcy Court notice of COR filed in Bk. Ct. 05/28/2015. (PI) [Entered: 06/11/2015 10:48 AM]
		* * * * *
11/16/2015	21	Filed (ECF) Attorney James Ray Streinz for Appellant Shelley A. Lorenzen in 15-1119, 15-1158's brief on appeal; served on 11/16/2015 email - Attorney for Appellee: Berman; Attorney for Appellants: McMilan, Streinz; US mail - Attorney for Appellee: Berman. [15-1119, 15-1158] (JRS) [Entered: 11/16/2015 04:44 PM]
11/16/2015	22	Filed (ECF) Attorney James Ray Streinz for Appellant Shelley A. Lorenzen in 15-1119, 15-1158's supplemental excerpts of record; served on 11/16/2015 email - Attorney for Appellee: Berman; Attorney for Appellants: McMilan, Streinz; US

mail - Attorney for Appellee: Berman. [15-1119, 15-1158] (JRS) [Entered: 11/16/2015 04:48 PM]

* * * * *

11/16/2015 26 Filed (ECF) Attorney Hollis K McMilan for Appellants Terry W. Emmert, Keith Jehnke and Sherwood Park Business Center, LLC in 15-1119, Attorney Hollis K McMilan for Appellants Terry W. Emmert, Sherwood Park Business Center, LLC and Keith Jehnke in 15-1158's brief on appeal; served on 11/16/2015 email - Attorney for Appellee: Berman; Attorney for Appellants: McMilan, Streinz. [15-1119, 15-1158] (HKM) [Entered: 11/16/2015 07:20 PM]

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12/04/2015 30 Filed (ECF) Attorney Hollis K McMilan for Appellants Terry W. Emmert, Keith Jehnke and Sherwood Park Business Center, LLC in 15-1119, Attorney Hollis K McMilan for Appellants Terry W. Emmert, Sherwood Park Business Center, LLC and Keith Jehnke in 15-1158's joinder in **opening brief filed by Shelley A. Lorenzen** ; served on 12/04/2015 email - Attorney for Appellee: Berman; Attorney for Appellants: McMilan,

		Streinz. [15-1119, 15-1158]--[Edited 12/07/2015 by SS]--[Edited 12/07/2015 by SS] (HKM) [Entered: 12/04/2015 03:10 PM]
12/07/2015	31	Filed (ECF) Attorney Mr. John Berman, Esquire for Appellee Bradley Weston Taggart in 15-1119, 15-1158's brief on appeal; served on 12/07/2015 email - Attorney for Appellee: Berman; Attorney for Appellants: McMilan, Streinz; US mail - Attorney for Appellants: McMilan, Streinz. [15-1119, 15-1158] (JB) [Entered: 12/07/2015 09:58 AM]
12/21/2015	32	Filed (ECF) Attorney James Ray Streinz for Appellant Shelley A. Lorenzen in 15-1119, 15-1158's reply brief on appeal; served on 12/21/2015 email - Attorney for Appellee: Berman; Attorney for Appellants: McMilan, Streinz. [15-1119, 15-1158] (JRS) [Entered: 12/21/2015 02:53 PM]
12/21/2015	33	Filed (ECF) Attorney Hollis K McMilan for Appellants Terry W. Emmert, Keith Jehnke and Sherwood Park Business Center, LLC in 15-1119, Attorney Hollis K McMilan for Appellants Terry W. Emmert, Sherwood Park Business Center, LLC and Keith Jehnke in

		15-1158's reply brief on appeal; served on 12/21/2015 email - Attorney for Appellee: Berman; Attorney for Appellants: McMilan, Streinz. [15-1119, 15-1158] (HKM) [Entered: 12/21/2015 07:32 PM]
		* * * * *
03/17/2016	38	ARGUED AND SUBMITTED TO Jury, Kirscher and Faris. [15-1119, 15-1158] (FB) [Entered: 03/17/2016 01:05 PM]
		* * * * *
04/12/2016	40	CLOSED: Case closed: Reversed/Vacated;Terminated on the merits after oral hearing;Written, Unsigned, Published; Judges: Jury, Kirscher and Faris 04/12/2016 15-1119 Reversed; Opinion [15-1119, 15-1158] (VJ) [Entered: 04/12/2016 02:32 PM]
04/12/2016	41	FILED AND ENTERED JUDGMENT. [EOD] Date: 04/12/2016. Mandate to issue: 05/03/2016. [15-1119, 15-1158] (VJ) [Entered: 04/12/2016 02:34 PM]
		* * * * *
04/26/2016	44	Notice of Appeal to the 9th Circuit (ECF) filed by Attorney Mr. John Berman, Esquire for Appellee Bradley Weston Taggart in 15-1119, 15-1158; Fee status: Not Paid;

		Receipt No.:served on 04/26/2016 served by: hand delivery - Attorney for Appellee: Berman; email - Attorney for Appellants: McMilan, Streinz; US mail - Attorney for Appellants: McMilan, Streinz. [15-1119, 15-1158] (JB) [Entered: 04/26/2016 05:33 PM]
04/27/2016	45	Notice of Appeal to the 9th Circuit (ECF) **(with BAP Opinion attached)** filed by Attorney Mr. John Berman, Esquire for Appellee Bradley Weston Taggart in 15-1158, 15-1119; Fee status: Not Paid; Receipt No.:served on 04/26/2016 served by: hand delivery - Attorney for Appellee: Berman; email - Attorney for Appellants: McMilan, Streinz; US mail - Attorney for Appellants: McMilan, Streinz. [15-1158, 15-1119]--[Edited 04/27/2016 by MW] (JB) [Entered: 04/27/2016 09:06 AM]
		* * * * *
05/04/2016	49	REVERSED and VACATED MANDATE ISSUED to Bankruptcy Court Portland (ORP) and to Originating Bankruptcy Judge. [15-1119, 15-1158] (PI) [Entered: 05/04/2016 03:27 PM]
		* * * * *

05/11/2016	52	Notice of Appeal to the 9th Circuit (ECF) filed by Attorney James Ray Streinz for Appellant Shelley A. Lorenzen in 15-1119, 15-1158; Fee status: ; Receipt No.:served on 05/11/2016 served by: email - Attorney for Appellee: Berman; Attorney for Appellants: McMilan, Streinz; US mail - Attorney for Appellee: Berman; Attorney for Appellants: McMilan, Streinz. [15-1119, 15-1158] (JRS) [Entered: 05/11/2016 04:49 PM]
05/11/2016	53	Notice of Appeal to the 9th Circuit (ECF) filed by Attorney Hollis K McMilan for Appellants Terry W. Emmert, Keith Jehnke and Sherwood Park Business Center, LLC in 15-1119, Attorney Hollis K McMilan for Appellants Terry W. Emmert, Sherwood Park Business Center, LLC and Keith Jehnke in 15-1158; Fee status: Not Paid; Receipt No.:served on 05/11/2016 served by: email - Attorney for Appellee: Berman; Attorney for Appellants: McMilan, Streinz. [15-1119, 15-1158] (HKM) [Entered: 05/11/2016 07:13 PM]

* * * * *

05/31/2017	57	Designation of Record and/or Statement of Issues (ECF) filed for

		Court of Appeals by Attorney Hollis K McMilan for Appellants Terry W. Emmert, Keith Jehnke and Sherwood Park Business Center, LLC in 15-1119, Attorney Hollis K McMilan for Appellants Terry W. Emmert, Sherwood Park Business Center, LLC and Keith Jehnke in 15-1158; served on 05/31/2016 served by: email - Attorney for Appellee: Berman; Attorney for Appellants: McMilan, Streinz. [15-1119, 15-1158] (HKM) [Entered: 05/31/2016 03:48 PM]
06/01/2016	58	Designation of Record and Statement of Issues filed for Court of Appeals by Attorney Hollis K McMilan for Appellants Terry W. Emmert, Keith Jehnke and Sherwood Park Business Center, LLC in 15-1119, 15-1158; copy forwarded to 9th Circuit. [15-1119, 15-1158] (PI) [Entered: 06/01/2016 12:28 PM]

UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF OREGON

No. 3:12-CV-00236-MO

BRADLEY WESTON TAGGART,
Appellant,

v.

STUART M. BROWN, et al.,
Appellees.

DOCKET ENTRIES

DATE	NO.	PROCEEDINGS
02/09/2012	1	Bankruptcy Appeal and Record received from the US Bankruptcy Court. Scanned docket sheet attached. Documents numbered 1-82 received from the Bankruptcy Court. Filed by Bradley Weston Taggart. Appellants brief is due by 3/20/2012. (eo) (Entered: 02/09/2012)
		* * * * *
02/13/2012	84	Designation of Record on Appeal and Statement of Issues on Appeal. Filed by Bradley Weston Taggart. (eo) (Entered: 02/13/2012)
		* * * * *

02/15/2012	86	**OFFICIAL COURT TRANSCRIPT OF PROCEEDINGS FILED.** Evidentiary hearing held on November 14th, 2011 before Bankruptcy Judge Randall L. Dunn. Transcript review due on 5/15/12. (eo) (Entered: 02/15/2012)
03/18/2012	87	Appellants Brief . Filed by Bradley Weston Taggart. Appellees brief is due by 4/17/2012. (Attachments: # 1 Appendix, # 2 Appendix, # 3 Appendix, # 4 Appendix, # 5 Appendix, # 6 Appendix, # 7 Appendix, # 8 Appendix, # 9 Appendix, # 10 Appendix, # 11 Appendix, # 12 Appendix, # 13 Appendix, # 14 Appendix, # 15 Appendix, # 16 Appendix) (Petticord, Damon) (Entered: 03/18/2012)
04/17/2012	88	Response , Appellees Brief . Filed by Stuart M. Brown. Appellants reply brief is due by 5/1/2012. (Attachments: # 1 Exhibit Ex 1: Excerpt of Record, # 2 Exhibit Ex 2: In re Kozak) (Bellis, Tyler) (Entered: 04/17/2012)
04/17/2012	89	Response *Appellees Brief*. Filed by Terry W. Emmert, Keith Jehnke, Sherwood Park Business Center LLC. (Smith, Tyler) (Entered: 04/17/2012)

04/30/2012	90	Appellants Reply Brief . Filed by Bradley Weston Taggart. Matter is taken under advisement as of 5/4/2012. (Petticord, Damon) (Entered: 04/30/2012)
08/07/2012	91	OPINION AND ORDER. The Bankruptcy Courts decision is REVERSED AND REMANDED for further proceedings consistent with my ruling. Signed on 8/6/12 by Judge Michael W. Mosman. (dls) (Entered: 08/07/2012)
08/09/2012	92	Motion for Attorney Fees , Bill of Costs . Filed by All Plaintiffs. (Attachments: # 1 Exhibit Respondents' Petition for Fees and Costs) (Berman, John) (Entered: 08/09/2012)
08/13/2012	93	Judgment. Based upon my Opinion and Order 91 , IT IS HEREBY ORDERED AND ADJUDGED that the Bankruptcy Courts decision is REVERSED, and this case is REMANDED for further proceedings. Pending motions, if any, are DENIED AS MOOT. Signed on 8/10/12 by Judge Michael W. Mosman. (dls) (Entered: 08/13/2012)
08/16/2012	94	Response in Opposition to Motion for Attorney Fees Bill of Costs 92 .

		Filed by Stuart M. Brown. (Bellis, Tyler) (Entered: 08/16/2012)
08/16/2012	95	Objections to Motion for Attorney Fees Bill of Costs 92 . Filed by Terry W. Emmert, Keith Jehnke, Sherwood Park Business Center LLC. (Smith, Tyler) (Entered: 08/16/2012)
08/19/2012	96	Motion for Clarification . Filed by Bradley Weston Taggart. (Berman, John) (Entered: 08/19/2012)
08/24/2012	97	Motion for Reconsideration of Opinion 91 . Filed by Stuart M. Brown. (Streinz, James) (Entered: 08/24/2012)
08/24/2012	98	Memorandum in Support *of Motion for Reconsideration or Rehearing*. Filed by Stuart M. Brown. (Related document(s): Motion for Reconsideration 97 .) (Streinz, James) (Entered: 08/24/2012)
08/24/2012	99	Motion for Reconsideration of Opinion 91 , Judgment, 93 . Filed by Terry W. Emmert, Keith Jehnke, Sherwood Park Business Center LLC. (Attachments: # 1 Attachment Memorandum in Support of Motion for Reconsideration, # 2 Exhibit 1, # 3 Exhibit 2,

		# 4 Exhibit 3) (Smith, Tyler) (Entered: 08/24/2012)
08/27/2012	100	Response to Motion for Reconsideration of Opinion 91 97 , Motion for Reconsideration of Opinion 91 , Judgment, 93 99 . Filed by All Plaintiffs. (Berman, John) (Entered: 08/27/2012)
09/20/2012	101	**ORDER:** DENYING as premature Motion for Attorney Fees 92 ; GRANTING Taxation of Costs 92 in the amount of $2,145.25. DENYING AS MOOT Motion for Clarification 96 . DENYING Motion for Reconsideration 97 . DENYING Motion for Reconsideration 99 . Ordered by Judge Michael W. Mosman. (dls) (Entered: 09/20/2012)
09/20/2012	102	Notice of Appeal to the 9th Circuit Filing fee $455 collected; Agency Tracking ID 0979-3040859: . Filed by Terry W. Emmert, Keith Jehnke, Sherwood Park Business Center LLC. (Snee, Robert) (Entered: 09/20/2012)
		* * * * *
10/25/2012	106	Order DENYING Certificate of Appealability Denied regarding Notice of Appeal 102 . Signed on 10/25/12 by Judge Michael W.

		Mosman. (dls) (Entered: 10/25/2012)
06/16/2014	107	MANDATE of USCA for the 9th Circuit, **USCA # 12-35781**, re Notice of Appeal 102 . The appeal from the District Court is hereby DISMISSED, and the case is REMANDED for further proceedings. (Attachments: # 1 Final Order) (dsg) (Entered: 06/16/2014)
04/16/2018	108	Notice of Appeal to the 9th Circuit Filing fee $505 collected; Receipt No. 25R112CO: . Filed by Stuart M. Brown. (Streinz, James) (Entered: 05/11/2016)

UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF OREGON

No. 09-39216-rld7

In re: BRADLEY WESTON TAGGART, Debtor.

DOCKET ENTRIES

DATE	NO.	PROCEEDINGS
11/04/2009	1	Chapter 7 Voluntary Petition, Fee Amount $299 (HEATHERMAN, PAUL) (Entered: 11/04/2009)
		* * * * *
11/23/2009	8	Amended Schedule(s) Filed By Debtor Bradley Weston Taggart (HEATHERMAN, PAUL) (Entered: 11/23/2009)
11/23/2009	9	Amended Schedule(s) Filed By Debtor Bradley Weston Taggart (HEATHERMAN, PAUL) (Entered: 11/23/2009)
		* * * * *
02/23/2010	14	Chapter 7 Trustee's Report of No Distribution: I, Michael B Batlan, having been appointed trustee of the estate of the above-named debtor(s), report that I have neither received any property nor paid

any money on account of this estate; that I have made a diligent inquiry into the financial affairs of the debtor(s) and the location of the property belonging to the estate; and that there is no property available for distribution from the estate over and above that exempted by law. Pursuant to Fed R Bank P 5009, I hereby certify that the estate of the above-named debtor(s) has been fully administered. I request that I be discharged from any further duties as trustee. Key information about this case as reported in schedules filed by the debtor(s) or otherwise found in the case record: This case was pending for 4 months. Assets Abandoned (without deducting any secured claims): $ 0.00, Assets Exempt: $ 4370.00, Claims Scheduled: $ 5784781.87, Claims Asserted: Not Applicable, Claims scheduled to be discharged without payment (without deducting the value of collateral or debts excepted from discharge): $ 5784781.87. (Re: Meeting of Creditors Set for 12/16/2009 at 09:30 AM at Bend National Guard Armory, Objection to Discharge Due

		02/16/2010.). Filed by Trustee Michael B Batlan. (Batlan, Michael) (Entered: 02/23/2010)
02/23/2010	15	Order Discharging Debtors; Order Discharging Trustee and Closing No Asset Estate and Certificate of Service (NOTE: If Any Related Adversary Proceeding Is Pending At Closing, Then All Further Adversary Entries Will Be On the Adversary Docket). (cmd) (Entered: 02/23/2010)
02/23/2010	16	Certificate of Notice Re: 15 Order Discharging Debtors; Order Discharging Trustee and Closing No Asset Estate and Certificate of Service (NOTE: If Any Related Adversary Proceeding Is Pending At Closing, Then All Further Adversary Entries Will Be On the Adversary Docket). (cmd). (Admin.) (Entered: 02/25/2010)
		* * * * *
06/20/2011	19	Motion to Reopen Chapter 7 Case Filed by Debtor Bradley Weston Taggart (PETTICORD, DAMON) (Entered: 06/20/2011)
		* * * * *
07/11/2011	23	Order Reopening Case. (cmd) (Entered: 07/11/2011)

07/13/2011	24	Motion For Contempt Filed by Debtor Bradley Weston Taggart (PETTICORD, DAMON) (Entered: 07/13/2011)
		* * * * *
08/15/2011	31	Supplemental Motion For Contempt Filed by Debtor Bradley Weston Taggart (PETTICORD, DAMON) (Entered: 08/15/2011)
08/15/2011	32	Supplemental Motion For Contempt Filed by Debtor Bradley Weston Taggart (PETTICORD, DAMON) (Entered: 08/15/2011)
		* * * * *
08/17/2011	34	Memorandum In Opposition to 24 Motion for Contempt Filed By Defendant Stuart M Brown (STREINZ, JAMES) (Entered: 08/17/2011)
08/23/2011	35	Hearing Held. Re: 24 Motion For Contempt Filed by Debtor Bradley Weston Taggart (PETTICORD, DAMON). (gjd) (Entered: 08/24/2011)
		* * * * *
10/17/2011	42	First Amended Motion For Contempt Filed by Debtor Bradley Weston Taggart (PETTICORD, DAMON) (Entered: 10/17/2011)

10/28/2011	43	Motion to Bifurcate Hearing on Debtor's Amended Motion for Contempt Filed by Creditor Stuart M Brown (STREINZ, JAMES) (Entered: 10/28/2011)
		* * * * *
10/31/2011	46	Order Granting 43 Motion to Bifurcate Hearing on Debtor's Amended Motion for Contempt filed by Creditor Stuart M Brown (cmd) (Entered: 10/31/2011)
		* * * * *
10/31/2011	50	Brief In Support of 42 Motion for Contempt Filed By Debtor Bradley Weston Taggart (PETTICORD, DAMON) (Entered: 10/31/2011)
		* * * * *
10/31/2011	53	Trial Memorandum Filed By Stuart M Brown, Terry W Emmert, Keith Jehnke re: 42 First Amended Motion For Contempt. (STREINZ, JAMES) Added link to related document. Modified on 11/1/2011 (rdl). (Entered: 10/31/2011)
10/31/2011	54	Hearing Held. Re: 43 Motion to Bifurcate Hearing on Debtor's Amended Motion for Contempt Filed by Creditor Stuart M Brown (STREINZ, JAMES), 44 Motion to Extend Time Deadline for Cutoff of Discovery Filed by Creditor Stuart

		M Brown (STREINZ, JAMES). (sfs) (Entered: 11/01/2011)
		* * * * *
11/14/2011	63	Hearing Held. Re: 42 First Amended Motion For Contempt Filed by Debtor Bradley Weston Taggart (PETTICORD, DAMON). (sfs) (Entered: 11/15/2011)
12/09/2011	64	Memorandum Opinion Re: 42 First Amended Motion For Contempt Filed by Debtor Bradley Weston Taggart (PETTICORD, DAMON) (cmd) (Entered: 12/09/2011)
		* * * * *
01/18/2012	67	Motion to Reconsider . Filed by Debtor Bradley Weston Taggart Re:42 First Amended Motion For Contempt Filed by Debtor Bradley Weston Taggart filed by Debtor Bradley Weston Taggart (PETTICORD, DAMON) (Entered: 01/18/2012)
1/23/2012	68	Order Denying Amended Motion to Hold Stuart M Brown, Terry W Emmert, Keith Jehnke and Sherwood Park Business Center, LLC in Contempt for Violating Discharge Injunction Under 11 USC 524 Re: 42 Amended Motion For Contempt (cmd) (Entered: 01/23/2012)

01/24/2012	69	Notice of Appeal. Filed by Debtor Bradley Weston Taggart RE:68 Order on Motion for Contempt (PETTICORD, DAMON). Appeal Designation Due: 02/7/2012. Modified on 1/24/2012 (pjk). Removed incorrect document link. (Entered: 01/24/2012)
		* * * * *
01/31/2012	74	Memorandum Opinion Re: 67 Motion to Reconsider . Filed by Debtor Bradley Weston Taggart Re:42 First Amended Motion For Contempt Filed by Debtor Bradley Weston Taggart filed by Debtor Bradley Weston Taggart (PETTICORD, DAMON) (cmd) (Entered: 01/31/2012)
01/31/2012	75	Order Denying 67 Motion to Reconsider (cmd) (Entered: 01/31/2012)
		* * * * *
02/07/2012	80	Respondents Motion for Attorney Fees and Costs Filed by Sherwood Park Business Center LLC, Terry W Emmert, Keith Jehnke (BROWN, STUART) (Entered: 02/07/2012)
		* * * * *
02/13/2012	85	Response Filed by Debtor Bradley Weston Taggart Re: 80 Respondents Motion for Attorney Fees and

		Costs Filed by Sherwood Park Business Center LLC, Terry W Emmert, Keith Jehnke, 81 COST BILL Filed by Terry W Emmert, Keith Jehnke, Sherwood Park Business Center LLC (PETTICORD, DAMON) (Entered: 02/13/2012)
02/13/2012	86	Designation of Record and Statement of Issues Filed by Debtor Bradley Weston Taggart RE: 69 Notice of Appeal filed by Debtor Bradley Weston Taggart (PETTICORD, DAMON). Modified on 2/13/2012 (pjk). Corrected: Added "Statement of Issues" to the docket text. (Entered: 02/13/2012)
		* * * * *
02/15/2012	89	Transcript re: Appeal of Evidentiary Hearing Held on November 14, 2011, and Notice of Filing Thereof, re: 42 First Amended Motion For Contempt Filed by Debtor Bradley Weston Taggart. Court Transcript Review due on 5/15/2012. (pjk) (Entered: 02/15/2012)
		* * * * *
02/22/2012	94	Reply and Supporting Document(s). Filed by Terry W Emmert, Keith Jehnke, Sherwood

		Park Business Center LLC Re: 85 Response Filed by Debtor Bradley Weston Taggart Re: 80 Respondents Motion for Attorney Fees and Costs Filed by Sherwood Park Business Center LLC, Terry W Emmert, Keith Jehnke, 81 COST BILL Filed by Terry W Emmert, Keith Jehnke, Sherwood Park Business Center LLC (BROWN, STUART) (Entered: 02/22/2012)
03/13/2012	95	Hearing Held. Re: 80 Respondents Motion for Attorney Fees and Costs. Filed by Sherwood Park Business Center LLC, Terry W Emmert, Keith Jehnke (BROWN, STUART). (gjd) (Entered: 03/14/2012)
03/15/2012	96	Abatement Order re: 80 Respondents Motion for Attorney Fees and Costs Filed by Sherwood Park Business Center LLC, Terry W Emmert, Keith Jehnke (BROWN, STUART) (cmd) (Entered: 03/15/2012)
		* * * * *
08/07/2012	105	Final Order By District Court Judge Michael W Mosman, Appeal on Civil Action Number: 3:12-cv-00236-MO, Reversed and Remanded Re: 68 Order Denying Amended Motion to Hold Stuart M

		Brown, Terry W Emmert, Keith Jehnke and Sherwood Park Business Center, LLC in Contempt for Violating Discharge Injunction Under 11 USC 524 Re: 42 Amended Motion For Contempt (cmd) (pjk) (Entered: 08/07/2012)
		* * * * *
10/11/2012	122	Abatement Order Re: 42 Motion For Contempt Violating Discharge Injunctions (Stuart M Brown, Terry W Emmert, Keith Jehnke and Sherwood Park Business Center LLC) (dtl) (Entered: 10/11/2012)
		* * * * *
06/16/2014	129	Order from Circuit Court Re: Appeal on Appellate Case Number: 1235781, DISMISSED and REMANDED to US District Court. 69 Notice of Appeal. Filed by Debtor Bradley Weston Taggart RE: 68 Order on Motion for Contempt. (pjk) (Entered: 07/01/2014)
		* * * * *
10/31/2014	144	Brief Motion for contempt Filed By Debtor Bradley Weston Taggart (BERMAN, JOHN) (Entered: 10/31/2014)
		* * * * *

10/31/2014	146	Memorandum Re: Filed By Creditor Stuart M Brown (STREINZ, JAMES) (Entered: 10/31/2014)
		* * * * *
10/31/2014	154	Memorandum In Opposition to Filed By Terry W Emmert, Keith Jehnke, Sherwood Park Business Center LLC (MCMILAN, HOLLIS) (Entered: 10/31/2014)
		* * * * *
11/07/2014	156	Hearing Held. Taken Under Advisement Re: 130 Correspondence Filed By Creditor Stuart M Brown. (bls) Additional attachment(s) added on 11/7/2014 (bls). (Entered: 11/07/2014)
		* * * * *
12/16/2014	158	Memorandum Opinion Re 42 First Amended Motion For Contempt Filed by Debtor Bradley Weston Taggart (dtl) (Entered: 12/16/2014)
12/17/2014	159	Order On 42 First Amended Motion For Contempt Filed by Debtor Bradley Weston Taggart. (dtl) (Entered: 12/17/2014)
		* * * * *
01/06/2015	163	Hearing Held. Re: 42 First Amended Motion For Contempt Filed by Debtor Bradley Weston

		Taggart. (gjd) (Entered: 01/07/2015)
		* * * * *
01/21/2015	166	Transcript of Hearing Held on November 7, 2014, and Notice of Filing Thereof, re: 130 Correspondence and Evidentiary Hearing Re Willful Issue. Court Transcript Review due on 4/21/2015. (pjk) (Entered: 01/21/2015)
		* * * * *
02/20/2015	169	Declaration of Damon J Petticord Re ATTORNEY FEES Filed By Debtor Bradley Weston Taggart (BERMAN, JOHN) (Entered: 02/20/2015)
02/20/2015	170	Brief Damages for contempt Filed By Debtor Bradley Weston Taggart (BERMAN, JOHN) (Entered: 02/20/2015)
02/20/2015	171	Declaration of John M Berman Re: ATTORNEY FEES Filed By Debtor Bradley Weston Taggart (BERMAN, JOHN)02/20/2015 (Entered: 02/20/2015)
02/20/2015	172	Memorandum Re: 42 Motion for Contempt Filed By Interested Party Shelley A. Lorenzen (STREINZ, JAMES) (Entered: 02/20/2015)

* * * * *

02/20/2015	175	Trial Memorandum Filed By Terry W Emmert, Keith Jehnke, Sherwood Park Business Center LLC (MCMILAN, HOLLIS) (Entered: 02/20/2015)
02/27/2015	176	Declaration of Damon Petticord Re: ATTORNEY FEES Filed By Damon J Petticord. (BERMAN, JOHN) (Entered: 02/27/2015)
02/27/2015	177	Evidentiary Hearing Held. Taken Under Advisement Re: 42 First Amended Motion For Contempt Filed by Debtor Bradley Weston Taggart. (gjd) (Entered: 02/27/2015)
03/03/2015	178	Correspondence Re: vacation of judgment Filed By Debtor Bradley Weston Taggart (BERMAN, JOHN) (Entered: 03/03/2015)
03/04/2015	179	Order to Vacate Judgment entered in Circuit Court of Washington Count, Case No. CO 85549CV re: 163 Hearing Held 177 Evidentiary Hearing Held re: 42 First Amended Motion For Contempt Filed by Debtor Bradley Weston Taggart. Modified on 3/5/2015 (pjk). Note: Added "entered in Circuit Court of Washington Count, Case No. CO

85549CV" for clarity. (Entered: 03/04/2015)

03/05/2015	180	Correspondence Re: Not Filing Objection Filed By Interested Party Shelley A. Lorenzen (STREINZ, JAMES) (Entered: 03/05/2015)
03/06/2015	181	Objection Filed by Terry W Emmert, Keith Jehnke, Sherwood Park Business Center LLC to #171 Declaration of John M Berman Re: Attorney Fees. #176 Declaration of Damon Petticord Re: ATTORNEY FEES Filed By Damon J Petticord. (MCMILAN, HOLLIS) Modified on 3/9/2015 (dtl). Added Link to Related Document. (Entered: 03/06/2015)

* * * * *

03/08/2015	183	Response Filed by Debtor Bradley Weston Taggart Re: 181 Objection Filed by Terry W Emmert, Keith Jehnke, Sherwood Park Business Center LLC (BERMAN, JOHN) #171 Declaration of John M Berman Re: Attorney Fees. #176 Declaration of Damon Petticord Re: ATTORNEY FEES Filed By Damon J Petticord. Modified on 3/9/2015 (dtl). Added Link to Related Document. (dtl). (Entered: 03/08/2015)

03/17/2015	184	Memorandum Opinion Re: 42 First Amended Motion For Contempt Filed by Debtor Bradley Weston Taggart (jbk) (Entered: 03/17/2015)
		* * * * *
03/26/2015	186	Order With Regard to Sanctions for Contempt Re: 184 Memorandum Opinion Re: 42 Motion For Contempt (dtl) (Entered: 03/26/2015)
		* * * * *
03/30/2015	188	Recover Judgment Against Terry W. Emmert, Keith Jehnke, Sherwood Park Business Center, LLC and Shelley Lorenzen, solely in her capacity as Executor of the Estate of Stuart Brown. (dtl) (Entered: 03/30/2015)
03/30/2015	-	Bankruptcy Case Closed. (NOTE: If any related adversary proceeding is pending at closing of this case, then all further adversary entries will be on the adversary docket.) (dtl) (Entered: 03/30/2015)
		* * * * *
04/13/2015	190	Notice of Appeal #1 and Optional Statement of Election to Bankruptcy Appellate Panel. (Attachments: # 1 Judgment) Filed by Terry W Emmert, Keith Jehnke, Sherwood Park Business Center

		LLC RE: 188 Judgment (MCMILAN, HOLLIS). Appeal Designation Due: 04/27/2015. (Entered: 04/13/2015)
		* * * * *
04/19/2015	196	Motion To Stay Pending Appeal . Filed by Terry W Emmert, Keith Jehnke, Sherwood Park Business Center LLC Re:190 Notice of Appeal #1 and Optional Statement of Election to Bankruptcy Appellate Panel. (Attachments: # 1 Judgment) Filed by Terry W Emmert, Keith Jehnke, Sherwood Park Business Center LLC RE: 188 Judgment (MCMILAN, HOLLIS). Appeal Designation Due: 04/27/2015. filed by Creditor Terry W Emmert, Creditor Keith Jehnke, Creditor Sherwood Park Business Center LLC (MCMILAN, HOLLIS) (Entered: 04/19/2015)
04/20/2015	197	Response Filed by Debtor Bradley Weston Taggart Re: 196 Motion To Stay Pending Appeal . Filed by Terry W Emmert, Keith Jehnke, Sherwood Park Business Center LLC Re:190 Notice of Appeal #1 and Optional Statement of Election to Bankruptcy Appellate Panel. (Attachments: # 1 Judgment) Filed by Terry W Emmert, Keith

Jehnke, Sherwood Park Business Center LLC RE: 188 Judgment (MCMILAN, HOLLIS). Appeal Designation Due: 04/27/2015. filed by Creditor Terry W Emmert, Creditor Keith Jehnke, Creditor Sherwood Park Business Center LLC (BERMAN, JOHN) (Entered: 04/20/2015)

* * * * *

04/23/2015 201 Hearing Held. Re: 192 Motion to Extend Time for Appeal Under 8002c Filed by Interested Party Shelley A. Lorenzen. (gjd) (Entered: 04/23/2015)

* * * * *

04/24/2015 204 Hearing Held. Re: 196 Motion To Stay Pending Appeal . Filed by Terry W Emmert, Keith Jehnke, Sherwood Park Business Center LLC Re:190 Notice of Appeal #1 and Optional Statement of Election to Bankruptcy Appellate Panel. (Attachments: # 1 Judgment) Filed by Terry W Emmert, Keith Jehnke, Sherwood Park Business Center LLC RE: 188 Judgment (MCMILAN, HOLLIS). Appeal Designation Due: 04/27/2015. filed by Creditor Terry W Emmert, Creditor Keith Jehnke, Creditor Sherwood Park Business Center

LLC, 197 Response Filed by Debtor Bradley Weston Taggart Re: 196 Motion To Stay Pending Appeal . Filed by Terry W Emmert, Keith Jehnke, Sherwood Park Business Center LLC Re:190 Notice of Appeal and Optional Statement of Election to Bankruptcy Appellate Panel. (Attachments: # 1 Judgment) Filed by Terry W Emmert, Keith Jehnke, Sherwood Park Business Center LLC RE: 188 Judgment (MCMILAN, HOLLIS). Appeal Designation Due: 04/27/2015. filed by Creditor Terry W Emmert, Creditor Keith Jehnke, Creditor Sherwood Park Business Center LLC. (gjd) (Entered: 04/24/2015)

* * * * *

04/27/2015 206 Designation of Record and Statement of Issues on Appeal Filed by Terry W Emmert, Keith Jehnke, Sherwood Park Business Center LLC RE: 190 Notice of Appeal #1 and Optional Statement of Election filed by Creditor Terry W Emmert, Creditor Keith Jehnke, Creditor Sherwood Park Business Center LLC (MCMILAN, HOLLIS). Modified on 4/28/2015 (pjk) to mod-

ify text to include "Statement of Issues on Appeal". (Entered: 04/27/2015)

* * * * *

04/27/2015 208 Motion To Stay Pending Appeal and Supporting Document(s). Filed by Terry W Emmert, Keith Jehnke, Sherwood Park Business Center LLC Re:196 Motion To Stay Pending Appeal. Filed by Terry W Emmert, Keith Jehnke, Sherwood Park Business Center LLC Re:190 Notice of Appeal #1 and Optional Statement of Election to Bankruptcy Appellate Panel. (Attachments: # 1 Judgment) Filed by Terry W Emmert, Keith Jehnke, Sherwood Park Business Center LLC RE: 188 Judgment (MCMILAN, HOLLIS). Appeal Designation Due: 04/27/2015. filed by Creditor Terry W Emmert, Creditor Keith Jehnke, Creditor Sherwood Park Business Center LLC filed by Creditor Terry W Emmert, Creditor Keith Jehnke, Creditor Sherwood Park Business Center LLC (MCMILAN, HOLLIS) (Entered: 04/27/2015)

* * * * *

04/29/2015 210 Response Filed by Debtor Bradley Weston Taggart Re: 208 Motion To

Stay Pending Appeal and Supporting Document(s). Filed by Terry W Emmert, Keith Jehnke, Sherwood Park Business Center LLC Re:196 Motion To Stay Pending Appeal. Filed by Terry W Emmert, Keith Jehnke, Sherwood Park Business Center LLC Re:190 Notice of Appeal #1 and Optional Statement of Election to Bankruptcy Appellate Panel. (Attachments: # 1 Judgment) Filed by Terry W Emmert, Keith Jehnke, Sherwood Park Business Center LLC RE: 188 Judgment (MCMILAN, HOLLIS). Appeal Designation Due: 04/27/2015. filed by Creditor Terry W Emmert, Creditor Keith Jehnke, Creditor Sherwood Park Business Center LLC filed by Creditor Terry W Emmert, Creditor Keith Jehnke, Creditor Sherwood Park Business Center LLC (BERMAN, JOHN) (Entered: 04/29/2015)

* * * * *

04/29/2015 213 Hearing Held. Re: 208 Motion To Stay Pending Appeal and Supporting Document(s). Filed by Terry W Emmert, Keith Jehnke, Sherwood Park Business Center LLC Re:196 Motion To Stay Pending Appeal . Filed by Terry W Emmert, Keith Jehnke, Sherwood Park Business

Center LLC Re:190 Notice of Appeal #1 and Optional Statement of Election to Bankruptcy Appellate Panel. (Attachments: # 1 Judgment) Filed by Terry W Emmert, Keith Jehnke, Sherwood Park Business Center LLC RE: 188 Judgment (MCMILAN, HOLLIS). Appeal Designation Due: 04/27/2015. filed by Creditor Terry W Emmert, Creditor Keith Jehnke, Creditor Sherwood Park Business Center LLC filed by Creditor Terry W Emmert, Creditor Keith Jehnke, Creditor Sherwood Park Business Center LLC. (gjd) (Entered: 04/30/2015)

* * * * *

04/30/2015	215	Order Granting 196 Motion To Stay Pending Appeal . filed by Creditor Terry W Emmert, Creditor Keith Jehnke, Creditor Sherwood Park Business Center LLC,, Granting 208 Motion To Stay Pending Appeal and Supporting Document(s). filed by Creditor Terry W Emmert, Creditor Keith Jehnke, Creditor Sherwood Park Business Center LLC (pjk) (Entered: 04/30/2015)
05/04/2015	216	Designation of Record Filed by Debtor Bradley Weston Taggart RE: 190 Notice of Appeal #1 and

		Optional Statement of Election filed by Creditor Terry W Emmert, Creditor Keith Jehnke, Creditor Sherwood Park Business Center LLC (BERMAN, JOHN). (Entered: 05/04/2015)
		* * * * *
05/12/2015	220	Notice of Appeal #2 and Optional Statement of Election to Bankruptcy Appellate Panel. Filed by Interested Party Shelley A. Lorenzen RE: 188 Judgment (STREINZ, JAMES). Appeal Designation Due: 05/26/2015. (Entered: 05/12/2015)
		* * * * *
05/26/2015	223	Transcript re: Appeal, of Hearing Held on February 27, 2015, and Notice of Filing Thereof, Re: 42 First Amended Motion For Contempt Filed by Debtor Bradley Weston Taggart. Court Transcript Review due on 8/24/2015. (ljr) Modified on 8/25/2015 (pjk). No requests for redaction; removed viewer restrictions. (Entered: 05/26/2015)
05/26/2015	224	Designation of Record, Statement of Issues Filed by Interested Party Shelley A. Lorenzen RE: 220 Notice of Appeal #2 and Optional

		Statement of Election filed by Interested Party Shelley A. Lorenzen (STREINZ, JAMES). Modified on 5/27/2015 (pjk) for clarity re: Appeal #2. (Entered: 05/26/2015)
		* * * * *
05/28/2015	228	Unopposed Motion for Court Certification for Direct Appeal *to the Ninth Circuit Court of Appeals* Filed by Interested Party Shelley A. Lorenzen (STREINZ, JAMES). (Entered: 05/28/2015)
		* * * * *
06/01/2015	230	Order Granting Motion for Court Certification for Direct Appeal to Circuit Court (Related Doc #) 228 Unopposed Motion for Court Certification for Direct Appeal *to the Ninth Circuit Court of Appeals* Filed by Interested Party Shelley A. Lorenzen. (pjk) (Entered: 06/01/2015)
		* * * * *
09/16/2015	237	Order from Circuit Court Re: Direct Appeal on Appellate Case Number: 15-80115, Denying. (ljr) (Entered: 09/21/2015)

Below is an order of the Court.

/s/ Randall L. Dunn
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
District of Oregon

Case No. 09-39216-rld7

IN RE BRADLEY WESTON TAGGART, xxx-xx-0766
Other names used by debtor: DUMPTRAX, LLC

Debtor(s)

CHAPTER 7 ORDER RE: DISCHARGE; AND ORDER DISCHARGING TRUSTEE AND CLOSING CH. 7 "NO ASSET" CASE

FILED: February 23, 2010

It appearing that on 11/4/09 a bankruptcy petition was filed by the debtor(s); timely complaints filed pursuant to 11 USC §523(a) could be pending and the court could still order that any affected debt is nondischargeable, however no complaint objecting to the debtor's discharge pursuant to 11 USC §727 was timely filed (or such complaint was filed, and after due notice and hearing, was not sustained); each timely filed written reaffirmation agreement was either rescinded or not approved by the court; the trustee

has filed a report of no assets and performed all other administrative duties as required; and therefore,

IT IS ORDERED that:

1. The debtor(s) shall be granted a discharge under §727 of Title 11, United States Code (the Bankruptcy Code).

2. The trustee is discharged as trustee of the debtor's estate; this case is closed; and the court shall retain jurisdiction over any adversary proceeding pending at the time of closure.

EXPLANATION OF BANKRUPTCY DISCHARGE IN A CHAPTER 7 CASE

This court order grants a discharge to the person(s) named as a debtor. It is not a dismissal of the case and it does not determine how much money, if any, the trustee will pay to creditors.

Collection of Discharged Debts Prohibited. The discharge prohibits any attempt to collect from a debtor a debt that has been discharged. For example, a creditor is not permitted to contact a debtor by mail, phone, or otherwise, to file or continue a lawsuit, to attach wages or other property, or to take any other action to collect a discharged debt from the debtor. (If applicable there are also special rules that protect certain community property owned by the debtor's spouse, even if that spouse did not file a bankruptcy case.) A creditor who violates this order can be required to pay damages and attorney's fees to the debtor.

However, a creditor may have the right to enforce a valid lien, such as a mortgage or security interest, against the debtor's property after the bankruptcy, if that lien was not avoided or eliminated in the bankruptcy case.

Also, a debtor may voluntarily pay any debt that has been discharged.

Debts that are Discharged. The Chapter 7 discharge order eliminates a debtor's legal obligation to pay a debt that is discharged. Most, but not all, types of debts are discharged if the debt existed on the date the bankruptcy case was filed. (If this case was begun under a different chapter of the Bankruptcy Code and converted to Chapter 7, the discharge applies to debts owed when the bankruptcy case was converted.)

Debts that are Not Discharged. Some of the common types of debts which are not discharged in a Chapter 7 bankruptcy case are:

a. Debts for most taxes;

b. Debts incurred to pay nondischargeable taxes;

c. Debts that are for domestic support obligations, or debts to a spouse or former spouse for property settlement;

d. Debts for most student loans;

e. Debts for most fines, penalties, forfeitures, or criminal restitution obligations;

f. Debts for personal injuries or death caused by the debtor's operation of a motor vehicle, vessel, or aircraft while intoxicated;

g. Some debts which were not properly listed by the debtor;

h. Debts the bankruptcy court specifically has decided or will decide in this case are not discharged;

i. Debts for which the debtor has given up the discharge protections by signing a reaffirmation agreement in

compliance with the Bankruptcy Code requirements for reaffirmation of debts; and

j. Debts owed to certain pension, profit sharing, stock bonus, other retirement plans, or to the Thrift Savings Plan for federal employees for certain types of loans from these plans.

This information is only a general summary of the bankruptcy discharge. There are exceptions to these general rules. Because the law is complicated, you may want to consult an attorney to determine the exact effect of the discharge in this case.

IN THE CIRCUIT COURT OF THE
STATE OF OREGON
FOR THE COUNTY OF WASHINGTON

No. CO 85540 CV

SHERWOOD PARK BUSINESS CENTER, LLC,
an Oregon limited liability company,

Plaintiff,

vs.

BRAD TAGGART, an individual, BT OF SHERWOOD, LLC,
an Oregon limited liability company, and
JOHN BERMAN, an individual,

Defendants.

BT OF SHERWOOD, LLC, an Oregon limited liability company and JOHN HOFFARD OF SHERWOOD, LLC,
an Oregon limited liability company,

Counterclaim Plaintiffs,

vs.

TERRY W. EMMERT, an individual, KEITH JEMNKE,
an individual and SHERWOOD PARK BUSINESS CENTER,
LLC, an Oregon limited liability company,

Counterclaim Defendants.

OBJECTION TO JUDGMENT

INTRODUCTION

The reason that no General Judgment has been submitted is because as a matter of federal law no attorney fees or costs, pre-or post-bankruptcy, can be assessed against Mr. Taggart. Thus, the payment to him for the 25% interest must be without any such offsets, as explained infra.

Mr. Brown, who submitted this form of General Judgment, is fully aware that he is asking the Court to participate in a violation of federal law. Moreover, he has been told that any attempt to seek such fees or costs will result in a legal proceeding against the responsible parties in the Bankruptcy Court for violation of Mr. Taggart's discharge. It is up to this Court to decide how it wishes to respond when an attorney asks it to violate federal law without even advising this Court that is being asked to do so.

The form of judgment is also incorrect with regard to the terms of purchase and with regard to who are the prevailing parties. The undersigned has prevailed on all of the claims involving him, by both SPBC and by Messrs, Jehnke and Emmert, and he is entitled to recover his costs, disbursements and attorney fees as the prevailing party.

SPBC improperly sued him, and he was granted summary judgment at an early stage in this case, Messrs. Jehnke and Emmert also sued him, and those claims were also dismissed. Any suggestion to the contrary is, again, misleading this Court.

DETAILS OF OBJECTIONS TO JUDGMENT

These comments are in the order in which the language appears in the judgment.

A. The proposed judgment states as follows, with the objectionable part italicized, at page 3 lines 3-6"

> "The purchase price shall be the fair market value of the Company multiplied by Taggart's 25% membership interest, *less any unpaid post-bankruptcy petition attorney fees, costs and prevailing party fees which might be assessed against Taggart pursuant to ORCP 68 and ORS Chapter 20 and any necessary proceedings in bankruptcy court or this court.*"

As you may recall, Mr. Taggart concluded that he had assigned his interest and received fair value. He considered himself to have no interest in this proceeding and asked at the commencement of the trial to be dismissed. He did not appear at trial or participate in any manner.

Under those facts it is a violation of federal law for anyone to attempt to obtain any award of attorney fees against him. Mr. Taggart has received a discharge in bankruptcy, and that discharge includes any liability arising from a continuation of this proceeding.

SPBC insists that he continues to be the owner of the 25% interest, even though Mr. Taggart made no such claim and did not engage in the litigation. SPBC and Messrs. Jehnke and Emmert cannot force the continuation of this litigation on Taggart, and then assert a claim for attorney fees and costs against him.

That was the express holding in *In re Ybarra*, 424 F3d 1018 (2005), a copy of which is attached to this brief. It held that where a litigant actively asserts claims in litigation post-petition, only then can he be assessed post-petition attorney fees, overruling *In re Ybarra*, 295 BR 609 (USBAP, 2002), which held that even then attorney fees could not be awarded.

As explained in the Ninth Circuit's decision, and there are numerous other cases that have so held in other jurisdictions, when one is discharged in bankruptcy from liability, including liability associated with prepetition litigation, the fact that the litigation continues without any involvement by the discharged debtor means that no attorney fees or costs on account of those claims can be asserted against the discharged debtor. His right to a fresh start is preeminent.

The relevant fact is whether the discharged debtor asserted claims in this case post-petition. He did not. Here Taggart did not do so, but actively sought to be dismissed from the case.

In addition, the reference to deducting from the payment to be made to Taggart any fees or costs in this or the Bankruptcy Court is improper, not only for the above reasons, but also because it suggests that this court has some authority to assess attorney fees incurred in some unspecified later bankruptcy court proceeding, or some other proceeding in this court, and to deduct them from what Taggart is owed, for which there is absolutely no basis. Rather, Messrs. Jehnke and Emmert have no legal basis for their claims. They just don't want to pay for what they say they want to buy. That is not an option.

The italicized portion of the judgment quote above violates federal law and must be stricken.

B. The proposed judgment improperly provides that the interest rate is to be *3.25% from the date of closing, does not provide for payments to be caught up and improperly asks that the proceeds be withheld.*

Messrs. Jehnke and Emmert seek to enforce Paragraph 12 of the Operating Agreement. A copy is included

with this Objection as the Court may not have easy access to it. To define the purchase one has to know:

A. When Mr. Taggart stopped being an owner and became a seller;

C. The date of valuation;

D. When interest starts;

E. The interest rate;

F. When payments are to be made; and

G. To whom the payments are to be made.

These are the answers to those questions;

1. Messrs. Jehnke and Emmert contend that Mr. Taggart stopped being an owner as of January 1, 2008, (See proposed General Judgment, ¶ 1(3). Under their contention, that is the event giving rise to their right to purchase his interest.

2. The election to purchase had to occur within 120 days of that date. (Operating Agreement, ¶ 12.3). Messrs. Emmert and Jehnke contend that they made their election at the appropriate time, so they are deemed to have elected within 120 days of January 1, 2008, or no later than April 29, 2008.

3. The closing was required to be within 90 days of their election. (Operating Agreement, ¶ 12.5) Therefore, the closing is deemed to have occurred no later than July 28, 2008.

4. Therefore, the valuation must be as of approximately July 28, 2008. That is the latest possible date for closing.

5. Interest commences from the date of the election to purchase, which is no later than April 28, 2008. (Operating Agreement, ¶ 12.5)

6. The interest rate is the prime rate of Wells Fargo on the date of the event that gives rise to the election to purchase. That is said to be January 1, 2008. (Operating Agreement, ¶ 12.5) The prime rate on that date was 7.5%. (Wells cargo's prime rate is the same as the national prime rate. A copy of the relevant prime rate schedule is attached.)

7. The down payment of 20% was due no later than the latest possible closing date, which was July 28, 2008. Then 60 monthly payments are due starting one month after closing. Therefore, the first monthly payment was due no later than August 28, 2008. (Operating Agreement, ¶ 12.5) Thus, the down payment and more than half of the total purchase price, plus interest, are currently due.

8. The payments must be paid to the seller. There is no provision in the Operating Agreement for any escrow account. Messrs. Jehnke and Emmert want to be the owners of the 25% that Mr. Taggart had owned. They have to pay for it, and they have to pay Mr. Taggart for it. Otherwise, Mr. Taggart would be entitled to the rights of an owner, which Messrs. Emmert and Jehnke have said terminated on January 1, 2008.

H. The judgment fails to recognize that Berman prevailed as to all claims involving him. He is entitled as a prevailing party to costs, disbursements and attorney fees. BT of Sherwood prevailed as to some claims and not as to other claims, also. It is suggested that paragraph 3

of the judgment be modified with a "." after prejudice, followed by the following: "Any claim for attorney fees, costs and prevailing party fees shall be determined in accordance with ORCP 68."

Respectfully submitted,

/s/ John M. Berman
John M. Berman, Pro Per and On Behalf of
BT of Sherwood, LLC

[1] IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR THE COUNTY OF WASHINGTON

Case No. C085540CV

SHERWOOD PARK BUSINESS CENTER LLC, an Oregon limited liability company,

Plaintiff,

vs.

BRAD TAGGART, an individual, BT OF SHERWOOD LLC, an Oregon limited liability company, and JOHN BERMAN, an individual

Defendants.

BT OF SHERWOOD LLC, an Oregon limited liability company, and JOHN HOFFARD OF SHERWOOD LLC, an Oregon limited liability company,

Counterclaim Plaintiffs,

vs.

TERRY W. EMMERT, an individual, KEITH JEHNKE, an individual, and SHERWOOD PARK BUSINESS CENTER LLC, an Oregon limited liability company,

Counterclaim Defendants.

TERRY EMMERT, an individual, KEITH JEHNKE, an individual, and SHERWOOD PARK BUSINESS CENTER LLC, an Oregon limited liability company,

Counterclaim Plaintiffs,

vs.

[2] BT OF SHERWOOD LLC, an Oregon limited liability company, JOHN HOFFARD OF SHERWOOD LLC, an Oregon limited liability company, and JOHN BERMAN, an individual,

Counterclaim Defendants.

TRANSCRIPT OF PROCEEDINGS
HEARING RE: JUDGMENT (5-2-11)

TRANSCRIPT OF PROCEEDINGS

BE IT REMEMBERED, that on the 2nd day of May, 2011, the above-entitled matter came on for Hearing before the HONORABLE DONALD R. LETOURNEAU, a Circuit Court Judge.

* * * * *

[6]MR. BROWN: * * * [W]hat I'll do is I'll take a look at the two judgments side by side and I will tell the court where we have disputes.

THE COURT: Thank you.

MR. BROWN: The first area is paragraph two where we talk about he engaged in wrongful conduct and then we go through what the wrongful conduct was and he should be expelled. And they take out all the wrongful conduct. I kind of like my language, but I think that's up to the court as to how the court wants to handle that.

THE COURT: Very well.

MR. BROWN: The second issue is our paragraph four, their paragraph three. What I did with ours is – is two

things that they have not done. I took the language from the LLC agreement and I included an offset if we file a petition for miss – a petition for attorney fees with regard to Mr. Taggart's post-discharge attorney fees. Because we feel he did come back into the case, so that is something we're not arguing here today.

We haven't decided whether we want to file for attorney fees or not and, in all likelihood, we probably won't, but experience with Mr. Berman indicates [7] that out of an abundance of caution we want an order that that's an offset now, because in the past Mr. Berman in another case came in with an attorney fee lien in between the judgment and the attorney fee and has claimed that he is now superior to the attorney fees and that there's no direct offset before his attorney's fees are satisfied.

So, we would simply want that language if we do file for attorney fees or costs against Mr. Taggart individually that that would be an offset to what we would owe him. The Oregon statutes provide for that, but we want to make sure that we don't have this problem that happened in another case.

THE COURT: Just out of curiosity, what statute provides for an offset?

MR. BROWN: Pardon?

THE COURT: Just out of curiosity, what statute provides for an offset?

MR. BROWN: It's – it was – it's OR – we cited it in our response, Your Honor. The – when you're expelling, you can have offsets –

THE COURT: Okay.

MR. BROWN: – for damages that are caused by the – it's 63.209.

THE COURT: Okay. Thank you.

MR. BROWN: Additionally, interest rate. The [8] LLC agreement states specifically it's the interest state of the Wells Fargo Bank. It's not the prime rate of – of the United States government, it's Wells Fargo bank. We did have testimony at trial.

I mean, I don't think he's expelled until Your Honor says he's expelled in a judgment which would mean that we would probably use the interest rate in effect on that day of Wells Fargo Bank. I don't know how the court would want to handle that, but it's – I would think that would be what we would use.

The other part of his proposed judgment that I did not like was paragraph four. Mr. Taggart, in fact, might be indebted to taxing authorities, but I would think that his membership interest might be part of his bankruptcy estate. We can't pay or Mr. Berman can't pay. The bankruptcy trustee would have to pay. That's why we put the language in our judgment about paying to an escrow account approved by the court until further order of this court or another court with jurisdiction.

For example, the Bankruptcy Court, if the bankruptcy trustee decides that he is entitled to distribute the proceeds as an asset of Mr. Taggart's bankruptcy estate of the sale of the membership interest. I don't think we have to get into that as to whose entitled to it. I think that is for the bankruptcy [9] trustee to decide and the Bankruptcy Court to decide. I certainly wouldn't – I certainly would strongly object on behalf of my client's tending deposit to Mr. Berman's trust account. The attorney fee lien issue has created problems in the past and I just think it ought

to be the bankruptcy trustee that makes the decision. If, in fact, the bankruptcy trustee is – is the person of interest to receive the proceeds; if not, the court can decide at that point how to set up an escrow account.

THE COURT: Thank you. I'm sorry.

MR. BROWN: Other than that, I think we're okay. We did have a – a change. Mr. Berman indicated that any party seeking costs or attorney fees shall do so in accordance with Rule 68 and that's fine with us.

* * * * *

[19] RULING

I – the language about post-judgment attorney fees that Mr. Brown has is acceptable to the court. It's clear that he's made it clear that and the law is clear that he can't get pre-judge – pre-bankruptcy attorneys fees and he's not seeking that. He's talking about post – I said judgment, it's post – that's not the right word. Post-bankruptcy filing. So, the words he used in the judgment were acceptable to me.

* * * * *

IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR THE COUNTY OF WASHINGTON

Case No. CO 85540CV

SHERWOOD, PARK BUSINESS CENTER, LLC, an Oregon limited liability company,

Plaintiffs,

v.

BRAD TAGGART, an individual, BT OF SHERWOOD, LLC, an Oregon limited liability company, and JOHN BERMAN, an individual,

Defendants.

BT OF SHERWOOD, LLC, an Oregon limited liability company and JOHN HOFFARD OF SHERWOOD, LLC an Oregon limited liability company,

Counterclaim Plaintiffs,

v.

TERRY W. EMMERT, an individual, KEITH JEHNKE, an individual and SHERWOOD PARK BUSINESS CENTER, LLC, an Oregon limited liability company,

Counterclaim Defendants.

TERRY W. EMMERT, an individual, KEITH JEHNKE, an individual and SHERWOOD PARK BUSINESS CENTER, LLC, an Oregon limited liability company,

Counterclaim Plaintiffs,

v.

BT OF SHERWOOD, LLC, an Oregon limited liability company, JOHN HOFFARD OF SHERWOOD, LLC an Oregon limited liability company, and JOHN BERMAN, an individual,

Counterclaim Defendants.

PLAINTIFF'S AND COUNTERCLAIM DEFENDANTS EMMERT AND JEHNKE'S PETITION FOR ATTORNEY FEES AND COSTS

The undersigned attorney represents, under penalty of perjury, the following facts offered in support of an award to Plaintiff and Counterclaim Defendants of reasonable and necessary attorney fees and costs and disbursements against Defendants Taggart and BT of Sherwood LLC (BT) are true:

1. Plaintiff Sherwood Park Business Center LLC (SPBC) and Counterclaim Defendants Emmert and Jehnke are entitled to recover attorney fees against BT of Sherwood LLC (BT) pursuant to the following facts and statutes:

ORS 20.096 provides:

> "In any action or suit in which a claim is made based on a contract that specifically provides that attorney fees and costs incurred to enforce the provisions of the contract shall be awarded to one of the parties, the party that prevails on the claim shall be entitled to reasonable attorney fees in addition to costs and disbursements, without regard to whether the prevailing party is the party specified in the contract and without

> regard to whether the prevailing party is a party to the contract."

In the present case, the Operating Agreement of SPBC contains the following clause:

> "In the event of any suit or action or arbitration proceeding to enforce or interpret any provision of this Agreement (or which is based on this Agreement), the prevailing party shall be entitled to recover, in addition to other costs, reasonable attorney fees in connection with such suit, action, arbitration, and in any appeal therefrom." Op. Ag. §13.6.

The evidence at trial was that Mr. Taggart was a member of SPBC. Mr Taggart assigned his membership interest to BT. BT claimed that it owned the interest, and it claimed that John Berman had later acquired a 100 percent ownership interest in BT. SPBC brought claims against Mr. Taggart and BT arising out of the transfer of interest, all of which were based upon the Operating Agreement and the claim of Taggart and BT that the transfer of the interest was proper. The claims brought against BT were based upon BT's contention that it was the assignee of Mr. Taggart's Membership interest in SPBC, and SPBC's contention that the assignment was ineffective, that Mr. Taggart remained the holder of the interest, and that Mr. Taggart should be expelled from membership. SPBC prevailed on its claim: Mr. Taggart's assignment of his interest to BT was declared ineffective, and Mr. Taggart was expelled as a member of SPBC.

BT also brought counterclaims against SPBC and Counterclaim Defendants Emmert and Jehnke alleging that each breached his fiduciary duties to BT. In a separate claims, BT requested that SPBC

be dissolved and that BT be awarded damages. BT alleged that it had the right to bring these claims because it was the assignee of Mr. Taggart's membership interest. All of BT's Counterclaims against SPBC, Mr. Emmert, and Mr. Jehke were dismissed. ORS 20.097(1) provides:

> "In any action or suit on a contract by an assignee of any right under that contract, the maker of that contract and the plaintiff in the action or suit on that contract shall be severally liable for any attorney fees and costs that may be awarded to the defendant in the action."

Because BT's right to bring counterclaims was based on the alleged assignment from Mr. Taggart, both BT (as assignee of Mr. Taggart's) and Mr. Taggart (as a "maker" of the Operating Agreement) would, therefore, be "severally liable" for the attorney fees incurred by SPBC, in defending against BT's claims, Mr. Emmert and Mr. Jehnke in defending against the First, Second, Third, and Fourth Counterclaims of BT, as well as any attorney fees incurred by SPBC with respect to its initial Claims for Relief concerning the invalidity of Taggart's transfer of his membership interest ORS 20.097(i) would also appear to impose liability on Mr. Taggart for fees and costs caused by BT's prosecution of its claims subsequent to November 4, 2009.

Ironically, BT's liability for attorney fees for the claims it made against Mr. Emmett and Mr. Jehnke has already been litigated. After filing this action in Washington County, BT filed another Complaint in Multnomah County against Mr. Emmert and Mr. Jehnke making the same allegations as those contained in its Counterclaims in this litigation. The Multnomah County Circuit Court dismissed the second lawsuit (on the basis of ORCP

21.A(3)), and awarded attorney fees under ORS 20.096 to Mr. Emmert and Mr. Jehnke. BT appealed that decision, but then dismissed its appeal and paid the award. A copy of the Court's award is attached to the Declaration of Mr. Brown that is filed herewith. We request that the Court take Judicial Notice of the file in the Multnomah County litigation for purposes of this request for attorney fees.

Mr. Taggart filed for bankruptcy on the day that trial was to begin in 2009. His liability for fees would be limited to fees incurred after he filed for bankruptcy on November 4, 2009; and then if he voluntarily inserted himself into ongoing litigation that had been started pre-petition. The Ninth Circuit, in *Ybarra v. Ybarra*, 424 F.3d 1018 (9th Circuit, 2005) stated:

> "In light of the foregoing discussion, we reaffirm that claims for attorney fees and costs incurred post-petition are not discharged where post-petition, the debtor voluntarily "return[s] to the fray." *See Siegel*, 143 F.3d at 533-34. Whether attorney fees and costs incurred through the continued prosecution of litigation initiated pre-petition may be discharged depends on whether the debtor has taken affirmative post-petition action to litigate a prepetition claim and has thereby risked the liability of these litigation expenses." Id. at 1026.

In the present case, Mr. Taggart filed a Declaration and Motion for Protective Order in the litigation on April 6 and 9, 2010, and a Motion to Dismiss on May 18, 2019, the first day of trial. Mr. Taggart also personally appeared at the hearing at the Form of Judgment, and Mr. Berman made arguments on his behalf. By doing so, Mr. Taggart voluntarily "returned to the fray" and tool "affirmative post-petition action to litigate to prepetition claim". He

has, therefore, risked the liability of the attorney fees and costs requested by the SPBC, Mr. Emmert and Mr. Jehnke. He also would be liable – post petition – for fees incurred as a result of BT's Counterclaims under ORS 20.097(1).

* * * * *

IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR THE COUNTY OF WASHINGTON

Case 3:12-cv-00236-MO

SHERWOOD PARK BUSINESS CENTER, LLC, an Oregon limited liability company,

Plaintiff,

vs.

BRAD TAGGART, an individual, BT OF SHERWOOD, LLC, an Oregon limited liability company, and JOHN BERMAN, an individual,

Defendants.

BT OF SHERWOOD, LLC, an Oregon limited liability company and JOHN HOFFARD OF SHERWOOD, LLC, an Oregon limited liability company,

Counterclaim Plaintiffs,

vs.

TERRY W. EMMERT, an individual, KEITH JEHNKE, an individual and SHERWOOD PARK BUSINESS CENTER, LLC, an Oregon limited liability company,

Counterclaim Defendants.

DEFENDANT BRAD TAGGART'S OBJECTIONS TO ATTORNEY FEES AND COSTS

I filed for bankruptcy just before the trial because I wanted to be done with Emmert, Jehnke and this entire

matter. I believed then, and I believe now, that BT of Sherwood, LLC, owned by Mr. Berman, owns a 25% interest in SPBC. The Court has ruled to the contrary.

Not only have I not sought to be involved with this litigation at any time, especially after my bankruptcy, but I sought to be dismissed prior to the recent trial. I note that Emmert and Jehnke contend that I "joined the fray" by seeking a protective order. Emmert and Jehnke wanted to harass me further after I filed bankruptcy by seeking to depose me yet again. The first deposition took a day. When there was no ruling on my request for a protective order, I went to the deposition.

The person who showed up to depose me was not Emmert or Jehnke's attorney, but Ken Bauman, a friend of Emmert who was not his or Jehnke's attorney in the case. Any legal fees incurred by Emmert and Jehnke in this matter were mostly not in litigation with me, because I did not have much to do with this case.

It is submitted that when I received a discharge in bankruptcy, that discharge protected me from any liability such as being sought in this matter, both for attorney fees and for any costs.

It is important to point out that I sought nothing in this litigation. I did not ask to be the owner of a 25% interest in SPBC. The fact that this Court ordered me to accept ownership is not because I sought such a result, for I did not.

I heard the Court say that it had a dislike for me personally at the last hearing. I have never testified before this Court. I had my interest sold long before this litigation to a fellow who was a tenant. Mr. Emmert refused to approve the sale when it came time to close, and the transaction failed. I also tried to sell my interest to Mr. Jehnke

and his partners before this litigation and before Mr. Berman became involved. Mr. Jehnke indicated he was willing, but it is my understanding that Mr. Emmert would not agree.

I understand that the Court has its opinion of me. I made the mistake of entering into joint business interests with Terry W. Emmert in 2003 and have been paying the price ever since. I am certainly not alone.

When I presented my claims concerning Mr. Emmert's conduct to a jury in Evergreen West Business Center, LLC v. Emmert, the jury agreed with my recollection of the facts and found against Mr. Emmert for breach of fiduciary duty and even awarded punitive damages against him for his conduct. He has since appealed the judgment in that case.

I have made other mistakes. I filed bankruptcy for a fresh start, not a fresh argument, especially with Mr. Emmert and Mr. Jehnke.

I respectfully submit that it would be a violation of my bankruptcy discharge to claim attorney fees or costs against me with regard to this matter.

/s/
Brad Taggart, Pro Per

IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR THE COUNTY OF WASHINGTON

Case No. CO 85540CV

SHERWOOD PARK BUSINESS CENTER, LLC, an Oregon limited liability company,

Plaintiff,

vs.

BRAD TAGGART, an individual, BT OF SHERWOOD, LLC, an Oregon limited liability company, and JOHN BERMAN, an individual,

Defendants.

BT OF SHERWOOD, LLC, an Oregon limited liability company and JOHN HOFFARD OF SHERWOOD, LLC, an Oregon limited liability company,

Counterclaim Plaintiffs,

vs.

TERRY W. EMMERT, an individual, KEITH JEHNKE, an individual and SHERWOOD PARK BUSINESS CENTER, LLC, an Oregon limited liability company,

Counterclaim Defendants.

BRAD TAGGART'S HEARING MEMORANDUM WITH REGARD TO REQUEST FOR FEES AGAINST HIM

This document responds to the arguments raised by Mr. Brown in the brief he just filed against Mr. Taggart:

1. Listing the right to recover attorney fees in the bankruptcy schedule.

Mr. Taggart was obligated to list any actual or potential assets of which he was aware when he filed his bankruptcy schedules so that the trustee could administer those assets. The right to fees in this case was a potential asset. The trustee did not seek to recover the fees, and neither has Mr. Taggart. In fact Mr. Taggart asked the undersigned to have him dismissed from the litigation. Mr. Taggart has never sought to recover attorney fees in this case.

2. Allegedly purporting to pursue any rights in this case.

Mr. Taggart did not appear during the trial of this matter. He appeared at the time that the case was originally set for trial and advised the undersigned that morning, and not before, that he was filing bankruptcy that day, which he did. The undersigned was not involved in Mr. Taggart's bankruptcy, or its timing, and was not even consulted.

A primary reason that Mr. Taggart filed bankruptcy was not to have any further involvement with this litigation, or to have anyone make a claim for attorney fees against him in this litigation. Mr. Taggart never returned to this litigation voluntarily and never pursued any claims in this litigation. Again, he affirmatively asked to be dismissed from it.

It is also important to point out that the Court's decision in this case did not result from any pleadings or claims filed by Mr. Taggart. Mr. Taggart was not a willing participant in this litigation, and pursuing him for attorney fees violates his discharge.

For the Court's information, this matter is currently before the United States Bankruptcy Court for the District of Oregon, and copies of those pleadings are attached hereto. This Court may wish to defer ruling until the United States Bankruptcy Court for the District of Oregon has ruled whether seeking these fees violates Mr. Taggart's discharge.

Respectfully submitted,

/s/ John M. Berman
John M. Berman, OSB No. 72024
Attorney for Brad Taggart

[1] IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR THE COUNTY OF WASHINGTON

Case No. CO 85540CV

SHERWOOD PARK BUSINESS CENTER, LLC, an Oregon limited liability company,

Plaintiffs,

v.

BRAD TAGGART, an individual, BT OF SHERWOOD, LLC, an Oregon limited liability company, and JOHN BERMAN, an individual,

Defendants.

BT OF SHERWOOD, LLC, an Oregon limited liability company and JOHN HOFFARD OF SHERWOOD, LLC, an Oregon limited liability company,

Counterclaim Plaintiffs,

v.

TERRY W. EMMERT, an individual, KEITH JEHNKE, an individual, and SHERWOOD PARK BUSINESS CENTER, LLC, an Oregon limited liability company,

Counterclaim Defendants.

TERRY W. EMMERT, an individual, KEITH JEHNKE, an individual, and SHERWOOD PARK BUSINESS CENTER, LLC, an Oregon limited liability company,

Counterclaim Plaintiffs,

v.

BT OF SHERWOOD, LLC, an Oregon limited liability company, JOHN HOFFARD OF SHERWOOD, LLC, an Oregon limited liability company, and JOHN BERMAN, an individual,

Counterclaim Defendants.

Proceedings from Audio
August 1, 2011

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* * * * *

[8] MR. BROWN: * * * The other two matters are the attorney fees requests against BT of Sherwood, LLC, and the attorney fees requested against Mr. Taggart individually.

* * * * *

[9] [W]e have requested attorney fees against Mr. Taggart, 20.096 for Sherwood Park; 20.097 for Emmert and Jehnke on the basis that Mr. Taggart was the assignor of a membership interest in Sherwood Park that carried with it the attorney fee clause from the operating agreement: And under 20.097, the assignor is jointly and severally responsible with the assignee for any attorney fees awarded.

In the present case, Mr. Taggart has gone through bankruptcy. He has been discharged of liabilities. However, the Ninth Circuit has said that if he voluntarily reenters the case or voluntarily participates in the case going forward, then he's liable for attorney fees.

In this present case, he moved for a protective order post-discharge, He filed a motion to dismiss post-dis-

charge. But most importantly, he had an answer, affirmative defenses, and counterclaims on [10] record. The counterclaims asked for an award of attorney fees.

That pleading was never dismissed. And, in fact, as we've indicated to the Court, in his bankruptcy pleadings, Mr. Taggart claimed as an asset attorney fees that might be awarded to him in the litigation, evidencing his nonabandonment of his claims for attorney fees.

That clearly indicates that he was participating in the litigation going forward, because at no time did he move to dismiss that answer, affirmative defenses, and his counterclaim.

Mr. Berman, in a document filed this morning with the Court, states that, in fact, Mr. Taggart asked the undersigned to have him dismissed from the litigation. Well, that was not true. He asked for dismissal of the claims against him on the grounds that those monetary claims were discharged by his bankruptcy. And those claims were not pursued by the – either the counterclaim defendants or the plaintiff in the case.

He then states: Mr. Taggart has never sought to recover attorney fees in this case. That is a factual statement that is simply not true. In his counterclaim, Mr. Taggart says: Defendant Taggart is [11] entitled to recover his attorney fees herein, pursuant to Section 13.6 of plaintiff's operating agreement and pursuant to ORS 20.105.

So with regard to Mr. Taggart, we believe that his maintenance of this claim, throughout the litigation, subjects him to attorney fees.

We have broken out those attorney fees, and actually we have run the attorney fees requested for Mr. Taggart from February 23rd of 2011. I think technically we could

have gone back to November 5th, when he filed his Chapter 7. But we went back to the date of his discharge, the date the discharge document was filed.

And according to those attorney fees, and we've provided the Court with the detailed breakdown, Sherwood Park is claiming $44,691.50: and defendants Emmert and Jehnke, counterclaim defendants, $40,163. And those are the amounts that they incurred in defending this case and in prosecuting the case subsequent to February 23rd of 2011.

Now, Mr. Taggart pleaded affirmative defenses that advanced the same claims made by ST in the regular litigation. So it was – it would be impossible to allocate between the litigation involving BT and the litigation involving Mr. Taggart. So we have simply [12] asked for the entire amount subsequent to February 23rd with regard to Mr. Taggart. And, of course, the amount awardable by the Court is discretionary.

* * * * *

[19] * * * Q [MR. BERMAN] Okay. Now, let's talk about this case, involving Sherwood Park. What role did this litigation play in your deciding to file Chapter 7 bankruptcy?

A [MR. TAGGART] Well, this – this is what just pushed me over the brink.

Q And what – and could you explain that?

A Well, I was totally out of money. This was a ridiculous lawsuit, in my opinion, from the get-go. We had had an opportunity to sell my interest to a tenant that is now a tenant in that project.

Everybody agreed that Mr. Emmert – there was just no way that I was going to ever be able to work out anything reasonable with these guys. It was just going to continue on. I was tired of it. It had been going on for years.

[20] MR. BROWN: Your Honor, at this point, I'm going to object to the testimony of Mr. Taggart, since this is testimony that, if its relevant, should have been given at trial. We tried the case without any of this.

THE COURT: I'll let his answer stand that he's given so far. You may ask your next question.

BY MR. BERMAN:

Q And after you filed bankruptcy, did you intend to participate in any manner in this lawsuit?

A No.

Q And with regard to the listing of a claim for attorneys' fees in the bankruptcy, were you obligated to list that?

A I was.

Q And did you – have you – after you filed bankruptcy, have you done anything to attempt to assert that right?

A Absolutely not.

Q And did you ever wish, after filing bankruptcy, to have any further involvement with this case?

A No involvement at all.

Q And did you ask me to have you dismissed from this case?

[21] A I did.

* * * * *

[39] MR. BERMAN: Yes. Now let's talk about Mr. Taggart and legal fees.

THE COURT: Very well.

MR. BERMAN: The law is very clear that [40] when he filed bankruptcy, he's entitled to be discharged from any potential liability in this case unless he affirmatively comes back into the case and requests and continues his litigation in the case.

And all the cases talk about where the party has claims that they've asserted. And they say that if you've – after the bankruptcy, if you go back and reassert those claims, you are then, from that point forward, liable for legal fees if you lose, just as if you've started the case at that time.

But if you don't do that, then you are not liable for anything. And that's very clear in the – that is why Mr. Brown talks about the fact that there was a pleading for attorneys' fees. And there was a pleading for attorneys' fees, which Mr. Taggart abandoned. He was obligated to list it in his bankruptcy schedules because it was a potential asset.

Neither he nor the trustee ever asserted any right. And in fact, it's clear, and since you're taking notice of it, that I told you at the beginning of the trial that Mr. Emmert – Mr. Taggart was not going to appear, did not wish to be involved in the case, and wished to be dismissed from it.

He didn't affirmatively become involved at all. He wanted nothing further to do with it. That's [41] why he filed bankruptcy.

The Court, in a sense – you know, he's been forced back into this case. He's not voluntarily done it. The Court ruled you still own this asset. But that's nothing that he

did. And none of these fees that they're seeking are anything that he participated in or had anything to do with him. He just ended up as a matter of your outcome.

If I gave you an analogy to it, to explain the situation, if somebody has a promissory note and a deed of trust on some property and they go through bankruptcy, the personal liability disappears but the mortgage on the property continues. And that's, in a sense, where we are. You can't – he's got no personal liability for any attorneys' fees. He's done nothing.

With regard to his request for a protective order, he was subpoenaed as a witness to be re-deposed. And as a witness, he's entitled to ask for protective order. He's been deposed once before, and the Court never ruled on it.

And he ended up going to the deposition and the deposition wasn't even held by any attorney for Mr. – for any of the parties here. It was held by Mr. Ken Bauman, who is Mr. Emmert's friend. And this ex-assistant U.S. Attorney who works with Mr. Emmert. [42] And it was just harassment to make him go do it.

So you find that he's – he's here involuntarily. He didn't want this interest. It's forced on him. And under the Bankruptcy Code, he can't be liable for fees. He hasn't done anything to have them imposed on him.

And I gave the Court a hearing memo. He has petitioned the Bankruptcy Court to resolve it and to – the proper procedure under the Bankruptcy Code, to file a motion for contempt. He can't file a separate lawsuit. It's a motion for contempt.

It's before the Bankruptcy Court, the judge who was his bankruptcy judge. There's going to be a telephone argument on August 23rd. And then the Court will set it for argument. And the Court will look at all of these facts and decide it.

I suppose you – well, my obligation to be candid with the Court, of course, you can decide it now that there's no right to fees under the Bankruptcy Code. You can defer and wait and hear what the bankruptcy judge says. Those are the two choices.

The Bankruptcy Code does not say you can't decide. It just says that if you impose fees and the Bankruptcy Code says you couldn't, it digs the hole deeper. So that's the situation of Mr. Taggart.

* * * * *

[48] THE COURT: * * * Anything else you want to add?

MR. BROWN: Just that Mr. Taggart knew what he was doing. He – he admits that he signed his – his motion to dismiss himself. He read it before he signed it. It doesn't dismiss his answer and counterclaim. He listed it in his bankruptcy as an asset. He intended to go forward with it. And dollars to doughnuts, if he had prevailed, he'd be here asking you for attorney fees.

And given the state of the pleadings, Your Honor would probably have to give it to him. So we believe we're entitled to the attorney fees we've requested. We talked about 20.105. We also asked for an enhanced prevailing party fee, but those are all in our –

THE COURT: Thank you. I'm going to take it under advisement for two reasons. One, I have $5,000 an hour of people squirming around and harassing me by poking their head in. But also I'm not – I'm not [49] familiar,

which isn't too shocking, with the abandonment theory vis-a-vis bankruptcy cases and attorneys fees, since it doesn't come up in state court hardly at all.

MR. BROWN: It's an abandonment –

THE COURT: I understand. So I need to read the case law a little bit on that one point and figure out how it fits into our facts. And I appreciate – I just don't know the answer because I – it just never comes up in state court, that issue.

* * * * *

DON LETOURNEAU (503) 846-3418
JUDGE

CIRCUIT COURT OF OREGON
TWENTIETH JUDICIAL DISTRICT
Washington County Courthouse
150 N. First Ave. Suite 490
Hillsboro, Oregon 97124
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August 11, 2011

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Re: Sherwood Park Business Center, LLC v. Brad Taggart et al.
Washington County Case No. C08-5540CV, attorney fee ruling

Counsel:

Pursuant to *McCarthy v. Oregon Freeze Dry, Inc.*, 327 Or 84 (1998), the court identifies the following relevant facts and criteria on which the court relies in determining an award of attorney fees/costs.

The court finds the hourly rate and time expended by counsels for the moving parties are reasonable. It also finds the costs sought are reasonable. Unless noted otherwise below, the bases for the awards cited by the moving parties are appropriate.

Taggart

The court notes that *In re Ybarra*, 424 F3d 1018 (9th Cir. 2005) holds that the trial court has power to award post-petition attorney fees against a debtor who continues to pursue litigation post-petition that had been begun pre-petition. This is consistent with the federal case law the court reviewed.

Taggart filed an answer that was file stamped October 28, 2009. The answer contained a counterclaim for attorney fees based on Section 13.6 of the Operating Agreement.

The answer also sought to have plaintiff's claim to be dismissed against him. This was consistent with the oral Motion to Dismiss raised at time of trial. Taggart never abandoned his counterclaim for attorney fees. Rather be continued to pursue his position post-petition that the plaintiff's claim against him be dismissed which, if successful, would have led to Taggart having a contractual right to obtain attorney fees.

The court awards attorney fees in favor of BT of Sherwood in the amount sought at oral argument. My notes are difficult to decipher but I believe that amount was $44,691.50. (It may be accurately $44,611.50 as the ten column is the one I am having trouble reading.) Costs and disbursements sought as well as the standard prevailing party fee are also appropriate.

BT of Sherwood

When the court inquired at oral argument, what the moving parties' response was to the citation to *AutoLend, IAP, Inc. v. Auto Depot, Inc.*, 170 Or App 135 (2000), Mr. Edelson proferred that he thought the case has been overruled by the revision of a statute. Counsel subsequently directed the court to ORS 20.083 with the lawyerly comment that his "enthusiasm for its applicability has diminished." The court treats this as an implied concession on this point.

BT of Sherwood was not a party to the contract. Taggard never successfully assigned his interest to BT of Sherwood. BT of Sherwood cannot be liable for attorney fees based on the contract. See, *HLHZ Investments, LLC v. Plaid Pantries, Inc.*, 2007 WL 31229985 (D. Or. 2007) (No. CIV. 06-797-KI)

ORS 20.105/Enhanced Prevailing Party Fee

The moving parties have a high burden to obtain attorney fees under this statute. They have not met that burden. The court concurs with the analysis in Mr. Berman's memorandum.

Likewise no enhanced prevailing party fee is warranted.

Prevailing Party Fees/Costs and Disbursements

There was a scant discussion of this in the briefs.

Sherwood Park Business Center is the prevailing party with respect to Brad Taggart (as noted above) and BT of Sherwood and is entitled to the standard prevailing party fee as well as costs and disbursements sought.

The court finds than neither Terry Emmert or Keith Jehnke nor BT of Sherwood are prevailing parties with respect to each other. It also relies expressly on ORCP 68B which grants the court discretion ("unless the court otherwise directs") vis a vis costs and disbursements.

In argument, neither Sherwood Park Business Center nor John Berman expressly sought prevailing party fee relating to the summary judgment in which both parties agreed and therefore the court concluded that Mr. Berman was not a partner in the Sherwood Park Business Center. No prevailing party fee is awarded. The court also expressly relies on ORCP 68B, cited above, vis a vis costs and disbursements

ORCP 17

As noted at the oral argument, the hearing with the respect to ORCP 17 was abated by the stipulation of the parties.

Conclusion

Mr. Brown shall prepare an order and money award consistent with this opinion.

Respectfully,

/s/ Donald R. Letourneau
Donald R. Letourneau
Circuit Court Judge

COURT OF APPEALS OF OREGON

C085540CV; A150753

SHERWOOD PARK BUSINESS CENTER, LLC,
an Oregon limited liability company,

Plaintiff-Respondent
Cross-Appellant,

v.

BRAD TAGGART, an individual; and BT OF SHERWOOD,
LLC, an Oregon limited liability company,

Defendants-Appellants
Cross-Respondents,

and

JOHN BERMAN, an individual,

Defendant.

BT OF SHERWOOD, LLC,
an Oregon limited liability company,

Counterclaim Plaintiff-Appellant
Cross-Respondent,

and

JOHN HOFFARD OF SHERWOOD, LLC,
an Oregon limited liability company,

Counterclaim Plaintiff,

v.

TERRY W. EMMERT, an individual; KEITH JEHNKE,
an individual; and SHERWOOD PARK BUSINESS CENTER,
LLC, an Oregon limited liability company,

Counterclaim Defendants-Respondents Cross-Appellants.

TERRY W. EMMERT, et al.,

Counterclaim Plaintiffs,

v.

BT OF SHERWOOD, LLC; et al.,

Counterclaim Defendants.

Argued and Submitted June 4, 2013.

Decided Nov. 26, 2014.

OPINION

Before ORTEGA, Presiding Judge, and HADLOCK, Judge, and NORBY, Judge pro tempore.

HADLOCK, J.

Brad Taggart and BT of Sherwood, LLC (BT) (collectively, "defendants") appeal a supplemental judgment awarding Sherwood Park Business Center, LLC (SPBC) attorney fees and costs against Taggart and costs against BT. They assert on appeal that Taggart's prior discharge in bankruptcy prevented the court from entering an award of fees or costs against him in this case and, furthermore, that no fees or costs should have been awarded to SPBC because SPBC did not file a statement for attorney fees as required by ORCP 68 C(4) and UTCR 5.080. SPBC, along with two of its members, Terry Emmert and Keith Jehnke

(collectively, "plaintiffs"), cross-appeal the supplemental judgment.[1]

The judgment resolving the claims underlying the trial court's attorney fee award was appealed separately. *Sherwood Park Business Center, LLC v. Taggart*, 261 Or.App. 609, 323 P.3d 551, *rev. den.*, 355 Or. 879, 333 P.3d 333 (2014). In that case, we affirmed the trial court's judgment, rejecting defendants' challenges to the trial court's resolution of the claims and counterclaims. Meanwhile, the court entered the supplemental judgment at issue in this case. We described the events that gave rise to this litigation in our earlier opinion. We repeat here those facts that are pertinent to our analysis.

I. BACKGROUND

"SPBC is a limited liability company that was formed in 1999 to develop a small office complex." *Id.* at 612, 323 P.3d 551. "After its formation in 1999, SPBC was initially managed by Taggart and had four original members—Taggart, Jehnke, John Hoffard, and Anthony Benthin. In 2003, Emmert purchased Benthin's interest and became a member of SPBC." *Id.* at 615, 323 P.3d 551 (footnote omitted).

> "Late in 2004, Taggart began having financial difficulties and companies in which he was an owner or manager began to have cash flow problems. For at least one of those companies—Builder's, Inc.—Taggart diverted funds intended for payroll tax withholding to his own use. In early 2005, that company was placed in

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[1] Taggart and BT were originally named as defendants in this case. Although Emmert and Jehnke were not originally plaintiffs in the case, we refer to them as plaintiffs along with SPBC for the sake of convenience.

> bankruptcy and Taggart disappeared for a period of time. Also in 2005, Taggart was removed as SPBC's manager and replaced by Jehnke.
>
> "In addition to diverting funds from Builder's, Inc., in late 2004 or early 2005, Taggart diverted approximately $30,000 from SPBC for his own purposes. SPBC initiated an arbitration proceeding; Taggart was represented by attorney [John] Berman during that proceeding. Ultimately, the arbitrator concluded that Taggart had converted funds from SPBC and breached his fiduciary duty to that company. A judgment was entered in favor of SPBC and against Taggart in 2008. Eventually, Berman paid that judgment.
>
> "* * *
>
> "In mid–2007, Berman advised Taggart to form an LLC and transfer his interest in SPBC to that LLC. Berman told Taggart that he could then freely sell his interest in the newly formed LLC to a third party without complying with restrictions imposed by the SPBC operating agreement on transfers of membership interests in SPBC. Berman assisted Taggart in forming BT (the new LLC) in July 2007. Taggart held 100 percent of the membership interests in that LLC and transferred his entire interest in SPBC to the LLC as its sole asset."

Id. at 615–16, 323 P.3d 551.

After Taggart had signed a document to transfer his interest in SPBC to BT, Berman e-mailed SPBC's attorney and informed him of the transfer; however, no "documentation of the transfer was provided to SPBC at that time." *Id.* at 617, 323 P.3d 551. "In late 2007, Berman took a security interest in Taggart's interest in BT to

secure payment of his fees. Then, in December of that year, Berman agreed to purchase an interest in BT[.]" *Id.* Over several months, Berman paid a total of $200,000 and ultimately received Taggart's entire interest in BT. "Berman and Taggart kept Berman's purchase of Taggart's interest in BT a secret until August 2008 and did not provide documentation of the transfer until the trial court ordered them to do so in the course of this litigation." *Id.*

Late in 2008, SPBC commenced this litigation. In its operative complaint, among other things, it sought to have the trial court expel Taggart from SPBC, declare that Taggart's attempted transfer of his interest in SPBC to BT was invalid, declare that BT had no interest in SPBC, and unwind the transactions between Taggart and BT.[2] It also sought attorney fees under the SPBC Operating Agreement.[3] BT, for its part, brought counterclaims in which it, among other things, sought equitable relief and asserted that Emmert and Jehnke[4] owed it a fiduciary duty and had breached that obligation. BT also alleged that, although it was not a party to the SPBC Operating Agreement, and "[n]otwithstanding that SPBC cannot

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[2] Berman was a defendant and counterclaim plaintiff in the underlying litigation; however, he is not a party on appeal.

[3] SPBC's first amended complaint alleges a claim for "Attorney fees—against all defendants." The text of the claim, however, asserts that, "if SPBC is a prevailing party, it is entitled to an award of attorney fees in its favor and against Taggart." The prayer for relief, likewise, seeks a judgment for "attorney fees incurred by SPBC against Taggart."

[4] As we noted in our original opinion, Emmert and Jehnke were originally brought into this case as third-party defendants and were later designated as counterclaim defendants. *See Sherwood Park Business Center, LLC*, 261 Or.App. at 611 n. 3, 323 P.3d 551.

assert attorney fees against [BT], since [SPBC] has asserted that the Operating Agreement's attorney fee clause applies, [BT is] entitled to recover [its] attorney fees unilaterally as the prevailing part[y]." Taggart, in a separate pleading, likewise asserted that he was "entitled to recover his attorney fees herein pursuant to Section 13.6 of [SPBC's] Operating Agreement and pursuant to ORS 20.105." Emmert and Jehnke, having been brought into the case by BT, brought their own claims. Among other things, they brought claims for declaratory relief and "[c]onspiracy to interfere with prospective economic advantage and contract," and sought attorney fees against BT under the SPBC Operating Agreement. SPBC later filed a pleading in which it "incorporate[d] and join[ed] in counterclaim defendants Terry W. Emmert and Keith Jehnke's counterclaims."

Before trial began, Taggart obtained a discharge of his debts in bankruptcy. The bankruptcy discharge, dated February 23, 2010, was filed with the trial court in March 2010. As discussed in our earlier opinion, Taggart filed a motion to dismiss the claims against him on the basis of the discharge.

> "At the beginning of the trial, the court addressed that motion. The court noted that it was 'not going to enter any money judgments against * * * Taggart, but I think there's some other claims that involve him that don't involve money.' Taggart asserted, however, that an 'attempt to unwind anything * * * would include [his] obligation to pay money back and that's * * * a financial impact on him. I think the Bankruptcy Code says that pre-petition conduct cannot be relied upon to cause financial liability to [a discharged] person.' Plaintiffs stated that they did not seek any monetary relief

against Taggart, and that dismissal was not appropriate because 'there is a nonmonetary claim for expulsion' and 'Taggart needs to remain in the case for purposes of the expulsion claim.' The court agreed:

"'I will not grant the motion to dismiss Mr. Taggart. Although I have already said and the other side has agreed that it's not a money judgment against him, but I think there are some technical claims that make him still technically a proper person in the lawsuit.'"

Sherwood Park Business Center, LLC, 261 Or.App. at 617–18, 323 P.3d 551 (ellipses and second brackets in original).

The case was then tried to the court. At the end of trial, the court announced its factual findings and legal conclusions. In particular, the court held that Taggart was subject to expulsion under ORS 63.209 and that it was appropriate to terminate Taggart's membership in SPBC. Furthermore, "the court determined that Taggart had not successfully transferred his SPBC membership interest to BT before that interest terminated[.]" *Id.* at 619, 323 P.3d 551. With respect to BT's claim for breach of fiduciary duty against Emmert and Jehnke, the court "concluded that there was no breach of fiduciary duty for two independent reasons: (1) as a matter of law, neither Emmert nor Jehnke owed fiduciary obligations to BT, and (2) even if they did owe a fiduciary duty, they did not breach it." *Id.* at 620, 323 P.3d 551.

After the trial, the parties did not agree as to the form of judgment that should be entered and, as a result, the court held a hearing at which the parties made arguments regarding the terms they believed that the judgment should contain. Taggart was present at that hearing but was not represented by an attorney. After hearing

argument from the attorneys, the court asked Taggart whether he "wish[ed] to argue anything at this juncture about what we're doing today?" Taggart replied:

> "MR. TAGGART: Only—the only thing I'd like to say, Your Honor, is that if—if the date is in 2008, then they do I feel they owe interest on that date. If it's not, then I—I deserved the—the tax benefit from that period of time. They can't have their cake and eat it too, in my opinion, so—
>
> "THE COURT: Very well.
>
> "MR. TAGGART: Fair is fair. Regarding the bankruptcy, my bankruptcy was discharged before you made your decision. There have been considerable payments made on the taxes already. We don't know what's the totals of those right now. My feeling is that any money that comes out of this should go into either an escrow account or Mr. Berman's trust account until we determine exactly what that number is. They're hopefully not going to be receiving a hundred percent of the proceeds * * *."

Taggart did not make any other argument during the hearing.

Ultimately, the court entered a general judgment as follows:

> "1. [SPBC] is entitled to judgment in its favor and against defendants Brad Taggart and BT of Sherwood, LLC * * * as follows:
>
> "(1) Brad Taggart's attempted transfer of his membership interest in [SPBC] to BT of Sherwood, LLC violated the Operating Agreement and Oregon law. The transfer is hereby deemed null and void;

"(2) Brad Taggart engaged in wrongful conduct as a member of [SPBC]. Brad Taggart is hereby expelled from [SPBC] effective January 1, 2008.

"(3) * * * Emmert and Jehnke have timely elected to purchase Taggart's 25% membership interest. Pursuant to Section 12.5 of the Operating Agreement, Keith Jehnke and Terry W. Emmert are entitled to purchase Brad Taggart's 25% membership interest in [SPBC] as follows:

> "The purchase price shall be the fair market value of the Company as of the date of entry of Judgment multiplied by Taggart's 25% membership interest, less any unpaid post-bankruptcy petition attorney fees, costs and prevailing party fees which might be assessed against Taggart pursuant to ORCP 68 and ORS Chapter 20 and necessary proceedings in bankruptcy court or this court.
>
> "* * * * * *

"2. * * * Emmert and Jehnke are entitled to judgment in their favor on their First Counterclaim (joined by [SPBC]) and it is hereby adjudged that: [BT was] not [a member] or authorized assignee[ ] of an existing member of [SPBC] in 2008, 2009, or the present. Accordingly, [it was] not and [is] not entitled to receive any distributions or allocations of profits or losses of [SPBC] since 2008.

"3. No parties are awarded money damages. All other claims, cross-claims, counterclaims, third-party claims, and counterclaims to third-party claims are dismissed with prejudice. Any party seeking fees or costs shall do so in accordance with ORCP 68."

Following entry of the general judgment, in June 2011, Emmert and Jehnke's attorney, Brown, filed a motion seeking attorney fees and costs from defendants in favor of plaintiffs.[5] At the same time, Brown and SPBC's attorney, Edelson, filed declarations in support of the petition for attorney fees and costs. BT objected to the petition. BT contended that no fees could be awarded against it because, it asserted, "SPBC has not filed either a petition for attorney fees or a cost bill," and Emmert and Jehnke's attorney could not file a "claim for attorney fees or costs on behalf of SPBC." In addition, BT asserted that SPBC had not alleged any right to fees against BT. BT further asserted that the other parties were seeking attorney fees pursuant to the SPBC Operating Agreement and statutory provisions relating to the imposition of contractual attorney fees, but, because BT was not a party to the Operating Agreement it could not be held liable for fees under that agreement. As to costs, BT asserted that Emmert and Jehnke were not prevailing parties as to BT and, therefore, were not entitled to recover costs against it.

Taggart similarly objected to any imposition of attorney fees or costs against him, pointing out that he had obtained a bankruptcy discharge before the trial in this case and asserting that "it would be a violation of [his] bankruptcy discharge to claim attorney fees or costs against [him] with regard to this matter."

In response to BT's objections, Edelson filed a supplemental declaration stating that Brown had filed the

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[5] Plaintiffs sought attorney fees pursuant to both ORS 20.105 and the SPBC Operating Agreement. The court rejected the request for fees pursuant to ORS 20.105, and that ruling is not challenged on appeal.

joint petition for attorney fees and costs "[u]pon [Edelson's] request and with [his] permission." Furthermore, he pointed out that SPBC had filed a pleading in which it adopted Emmert and Jehnke's counterclaims, which included a claim for attorney fees against BT. In addition, in a reply memorandum, plaintiffs asserted that, because Taggart (1) failed to dismiss his counterclaim for attorney fees, (2) filed a motion for protective order and motion to dismiss subsequent to the discharge, and (3) personally appeared and argued at the hearing regarding the form of judgment, he was "liable for attorney fees incurred post-discharge." As to BT, plaintiffs asserted that BT was liable pursuant to the SPBC Operating Agreement because "BT claimed to be the authorized assignee of Mr. Taggart's full membership interest and claimed benefits available under the Operating Agreement only to members of SPBC. BT's claims were based upon the Operating Agreement, and the Operating Agreement itself provides for attorney fees for the prevailing party in an action to enforce or interpret a provision of the agreement.

The trial court held a hearing on the issue of attorney fees on August 1, 2011, and later issued a letter opinion resolving the issues presented by the parties' arguments. It concluded that the costs and the "hourly rate and time expended by counsels for the moving parties are reasonable."

With respect to the request for fees as to Taggart, the court observed that, pursuant to *In re Ybarra*, 424 F.3d 1018 (9th Cir.2005), it had "power to award post-petition attorney fees against a debtor who continues to pursue litigation post-petition that had been begun pre-petition." With that standard in mind, the court concluded that it was

appropriate to award attorney fees and costs against Taggart regardless of the bankruptcy discharge:

> "Taggart filed an answer that was file stamped October 28, 2009. The answer contained a counterclaim for attorney fees based on Section 13.6 of the Operating Agreement.
>
> "The answer sought to have plaintiff's claim to be dismissed against him. This was consistent with the oral Motion to Dismiss raised at the time of trial. Taggart never abandoned his counterclaim for attorney fees. Rather he continued to pursue his position post-petition that the plaintiff's claim against him be dismissed which, if successful, would have led to Taggart having a contractual right to obtain attorney fees."

In contrast, the court declined to award attorney fees against BT. The court observed that counsel for SPBC had "directed the court to ORS 20.083 with the lawyerly comment that his 'enthusiasm for its applicability has diminished.'" Ultimately, the court concluded that BT "was not a party to the contract. Taggart never successfully assigned his interest to" it. Thus, BT "cannot be liable for attorney fees based on the contract."

On the issue of costs, the trial court determined that SPBC was the prevailing party with respect to both Taggart and BT and was entitled to costs. However, the court did not award costs to Emmert and Jehnke, concluding that neither Emmert and Jehnke nor BT were "prevailing parties with respect to each other." The court also "relie[d] expressly on ORCP 68 B which grants the court discretion ('unless the court otherwise directs') vis a vis costs and disbursements."

Based on those rulings, the trial court entered a supplemental judgment awarding SPBC $45,404.30 in attorney fees and costs from Taggart and $3,309.95 in costs from BT. The judgment provided that Emmert and Jehnke were "not entitled to any award of fees or [c]osts from" Taggart or BT.

II. ANALYSIS

As noted, defendants appeal the supplemental judgment, asserting that the trial court erred in entering a judgment for attorney fees and costs. Plaintiffs, for their part, raise two assignments of error on cross-appeal with respect to the supplemental judgment. We begin by addressing defendants' contentions on appeal and then turn to the issues raised on cross-appeal.

A. *Appeal—Fees and costs against Taggart*

Defendants first assign error to the trial court's award of attorney fees and costs against Taggart. They assert that Taggart's discharge in bankruptcy prevented an award of attorney fees or costs from being entered against him.

As the court explained in *Ybarra*, a bankruptcy discharge "releases the debtor from personal liability for [his or] her pre-bankruptcy debts." 424 F.3d at 1022. A discharge "is the legal embodiment of the idea of the fresh start; it is the barrier that keeps the creditors of old from reaching wages and other income of the new." *Id.* (internal quotation marks omitted). However, where there is "post-petition voluntary action on the part of the debtor" that gives rise to a claim for attorney fees against him, the discharge may not prevent "the award of post-petition attorney fees." *Id.* at 1024. According to the court, "[e]ven if a cause of action arose pre-petition, the discharge shield

cannot be used as a sword that enables a debtor to undertake risk-free [post-petition] litigation at others' expense." *Id.* at 1026. Thus, "post-petition attorney fee awards are not discharged where post-petition, the debtor voluntarily 'pursue[d] a whole new course of litigation,' commenced litigation, or 'return[ed] to the fray' voluntarily." *Id.* at 1024 (quoting *Siegel v. Federal Home Loan Mortgage Corp.*, 143 F.3d 525, 533–34 (9th Cir.1998)) (brackets in *Ybarra*). "Whether attorney fees and costs incurred through the continued prosecution of litigation initiated pre-petition may be discharged depends on whether the debtor has taken affirmative post-petition action to litigate a prepetition claim and thereby has risked the liability of these litigation expenses." *Id.* at 1026; *see In re Gillespie*, 516 B.R. 586, 592 (9th Cir. BAP 2014) (applying rule from *Ybarra* to conclude that the debtor was "not entitled to a discharge of * * * postpetition attorney fees" where the debtor "chose to resume his participation in the state court action postpetition in order to preserve his * * * asserted interest in the collateral, in his cross-claims, and in his defenses to [the other party's] claims").

Here, defendants assert, Taggart did not engage in any conduct post-discharge that constitutes a return to the fray and, therefore, the bankruptcy discharge bars entry of an award of attorney fees in this case.

We note that, while this appeal was pending, the United States District Court for the District of Oregon was presented with and decided this issue as to these parties. Taggart had sought to have Emmert, Jehnke, their attorney, and SPBC held in contempt for violating the bankruptcy discharge injunction by seeking attorney fees in this case. *Taggart v. Brown*, No 3:12–CV–00236–MO,

2012 WL 3241758 (D.Or., Aug 6, 2012), *appeal dismissed*, 575 Fed.Appx. 719 (9th Cir.2014). After the bankruptcy court denied the motion for contempt, Taggart appealed to the district court. The court considered whether Taggart, in this case, had engaged in post-petition conduct that constituted a return to the fray. As the court noted,

> "Taggart did not commence the litigation at issue here, nor can the state court case be considered the commencement of a new suit. He did bring a counterclaim for attorney fees prepetition, which was eventually discharged back to him upon resolution of his Chapter 7 case, and which he never affirmatively moved to dismiss post-petition. [His] remaining involvement in the lawsuit post-discharge is described as follows. Prior to trial, Mr. Berman filed a motion for a protective order on behalf of Mr. Taggart in which he requested that a subpoena for Mr. Taggart's second deposition be quashed, as well as attorney fees in connection with the motion. Mr. Berman also filed a pretrial motion to dismiss in which he sought to dismiss the claims against Mr. Taggart pursuant to his Chapter 7 discharge. Mr. Berman renewed the motion orally at the close of evidence. After the trial, and after [a form of judgment including attorney fees had been submitted], Mr. Berman filed an objection on behalf of himself and BT, in which he also argued that no attorney fees or costs, pre or post-bankruptcy, could be assessed against Mr. Taggart pursuant to *In re Ybarra*.
>
> * * * At the hearing with regard to Mr. Berman's objection, Mr. Taggart, who the state court had previously ruled maintained a 25% interest in [SPBC], appeared on his own behalf and argued in

> entirety that plaintiffs should have to pay interest on the purchase price of his interest in SPBC for the three years that had passed and that any proceeds from the subsequent transaction should go into an escrow account. Following the [general judgment], Mr. Taggart personally filed 'Objections to Attorney Fees and Costs,' and a Notice of Appeal. In the former, he argued that any claim for fees or costs violated his Chapter 7 discharge."

Id. at *4 (internal citations omitted).

The district court then considered whether Taggart's actions were "sufficiently affirmative and voluntary to constitute returning to the fray." *Id.* It concluded that they were not. According to the district court, Taggart's objection to the second deposition was simply a reaction "to what he viewed as an oppressive litigation strategy as opposed to affirmatively committing an act that forced [the other parties] to incur post-petition legal fees." *Id.* Likewise, Taggart's assertions to the trial court that he could not be held liable for attorney fees "were reactionary and solely in response to a potential judgment against him for attorney fees, as opposed to affirmative and voluntary actions for the purpose of seeking attorney fees for himself." *Id.* The district court also concluded that Taggart's remaining actions did not constitute voluntary, affirmative post-petition conduct that would subject him to liability for attorney fees. The court explained that Taggart merely sought to extricate himself from the case by way of the motion to dismiss in light of the bankruptcy discharge and "did not move to dismiss the claims against him on the merits." *Id.* at *5. Similarly,

> "the fact that Mr. Taggart failed to affirmatively dismiss his counterclaim does not change the

> conclusion either, because the [other parties] here never requested that Mr. Taggart dismiss his counterclaim after arguing that he should remain in the case, nor did Mr. Taggart's failure to seek dismissal of the counterclaim cause [the opposing parties] to take action themselves lest they face judgment. Lastly, Mr. Taggart's actions in requesting to be dismissed pursuant to his bankruptcy injunction, opposing the second deposition, and failing to dismiss his counterclaim should not have indicated to [SPBC, Emmert, and Jehnke] that he affirmatively intended to seek attorney fees."

Id. Accordingly, the court reversed and remanded the bankruptcy court's ruling that the parties seeking attorney fees from Taggart were not in contempt.

We agree that Taggart's post-petition conduct before the trial court in this case was not voluntary, affirmative post-petition action such that he should have been held liable for attorney fees. Post-petition, Taggart moved to dismiss the claims against him on the basis of the bankruptcy petition. He did not seek a ruling on the merits of the claims against him but, rather, sought to extricate himself from the litigation and thereby obtain the fresh start the bankruptcy was intended to afford him. Taggart did not participate in the trial of the case. Although he spoke briefly at the hearing on the form of the judgment after the court refused to dismiss him from the litigation, Taggart's comments—in response to a question from the court—were minimal. He merely stated that he believed interest should accrue beginning in 2008—the date that he was deemed expelled from SPBC—and that any funds should be put into an escrow account. In our view, those

actions were not the type of voluntary affirmative acts that would constitute a return to the fray of litigation. Likewise, Taggart's remaining actions, such as his objection to the imposition of fees or costs against him based on the bankruptcy discharge, were simply attempts to shield himself from the continued litigation and do not provide a basis for the imposition of attorney fees. Finally, Taggart's failure to dismiss his counterclaim for attorney fees does not amount to the "pursu[it of] a whole new course of litigation, commence[ment of] litigation, or return[ing] to the fray voluntarily." *Ybarra*, 424 F.3d at 1024 (internal quotation marks omitted). Rather than engaging in affirmative action to continue the litigation, Taggart passively failed to take action. In sum, we agree that Taggart did not engage in conduct that, under *Ybarra*, would result in liability for post-petition attorney fees before the trial court. Accordingly, we conclude that the court erred in awarding SPBC fees and costs against him.

B. *Appeal—Costs against BT*

Next, defendants assert that, in any event, no award of attorney fees or costs could be entered in favor of SPBC because it did not file a statement for attorney fees or costs under ORCP 68 C(4).[6] In particular, they assert that SPBC failed to properly file a statement for attorney fees and costs under ORCP 68 C(4) because the statement that was filed, although purportedly on behalf of SPBC as well as Emmert and Jehnke, "was only signed by the attorney for Emmert and Jehnke." We reject that contention.

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[6] As we have already explained, the award of attorney fees and costs against Taggart was improper in light of the bankruptcy discharge. However, the court also imposed costs against BT.

Under ORCP 68 C(4)(a), a "party seeking attorney fees or costs and disbursements shall, not later than 14 days after entry of judgment":

> "C(4)(a)(i) File with the court a signed and detailed statement of the amount of attorney fees or costs and disbursements that explains the application of any factors that ORS 20.075 or any other statute or rule requires or permits the court to consider in awarding or denying attorney fees or costs and disbursements, together with proof of service, if any, in accordance with Rule 9 C; and
>
> "C(4)(a)(ii) Serve, in accordance with Rule 9 B, a copy of the statement on all parties who are not in default for failure to appear." *See also Jaffe v. The Principle Company*, 215 Or.App. 385, 391, 170 P.3d 4 (2007) ("ORCP 68 C(4) requires that a party seeking attorney fees and costs must file its statement within 14 days after the judgment has been entered.").

Here, the attorney fee petition was filed within 14 days of the trial court's entry of the general judgment. The petition was signed by Emmert and Jehnke's attorney, Brown, and explicitly sought attorney fees on behalf of SPBC as well as Emmert and Jehnke. It was accompanied by a declaration from SPBC's attorney, Edelson. In that declaration, which Edelson signed under penalty of perjury, he, among other things, detailed the fees and costs that he requested, discussed his education and experience, talked about the other attorneys who had worked on the case and their experience and hourly rates, and explained why the fees sought were reasonable under all the circumstances of this case. As noted, in a second declaration, Edelson stated that Emmert and Jehnke's attorney had filed the petition for fees and costs on behalf

of SPBC along with his own clients and had done so upon Edelson's request and with his permission. Suffice it to say that, in our view, the petition and accompanying declarations satisfied the requirement of ORCP 68 C(4) that a party seeking attorney fees or costs and disbursements file a signed detailed statement of the amount of attorney fees or costs within 14 days after entry of judgment.

Defendants raise additional complaints with respect to the schedule of fees and costs under UTCR 5.080 which we reject without discussion. In sum, we conclude that the trial court did not err in awarding costs in favor of SPBC and against BT.

C. *Cross-appeal—Denial of attorney fees against BT*

As noted, with respect to SPBC's entitlement to recover its attorney fees from BT, the trial court concluded that, because BT was not a party to the contract which contained the attorney fee provision, BT could not be liable for attorney fees. On cross-appeal, plaintiffs assert that the trial court erred "in ruling that there could not be an attorney fee award against BT." In plaintiffs' view, attorney fees could be awarded against BT under ORS 20.096 and ORS 20.083 even though BT was not a party to the Operating Agreement. Defendants respond that SPBC did not allege a right to attorney fees in its pleadings and that, in any event, because "there was no contract providing for an award of attorney fees to which BT was a party, no attorney fees were awardable * * * against BT."[7]

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[7] Defendants also assert that SPBC cannot be awarded attorney fees because it failed to file a statement for attorney fees, a contention

We begin by noting that defendants are incorrect in their assertion that SPBC did not allege a right to fees against BT in its pleadings. Defendants observe that, in the text of its complaint, SPBC asked for attorney fees against Taggart only. However, defendants fail to note that, in response to defendants' answer and counterclaims, Emmert and Jehnke filed counterclaims, including a claim for attorney fees against BT and, in its pleading in response to defendants' counterclaims, SPBC "incorporate[d]" and "join[ed]" in Emmert and Jehnke's counterclaims. As plaintiffs point out, "[b]y incorporating and joining in the counterclaims filed by Emmert and Jehnke, SPBC * * * alleged a counterclaim for attorney fees against BT."

Nonetheless, defendants contend that the trial court correctly declined to hold BT liable for attorney fees under a contract to which it was undisputedly not a party. The SPBC Operating Agreement lists as parties the original members of SPBC (Taggart, Hoffard, Benthin, and Jehnke) and "any other persons who are hereafter admitted as Members pursuant to the terms of this Agreement." Neither plaintiffs nor defendants in this case asserted that BT was a party to that agreement.

Under the attorney-fee provision of the agreement,

> "[i]n the event of any suit or action or arbitration proceeding to enforce or interpret any provision of this Agreement (or which is based on this Agreement), the prevailing party shall be entitled to recover, in addition to other costs, reasonable attorney fees in connection

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that we discussed and rejected in our analysis of defendants' contentions on appeal.

> with such suit, action, arbitration, and in any appeal therefrom. The determination of who is the prevailing party and the amount of reasonable attorney fees to be paid to the prevailing party shall be decided by the arbitrator (with respect to attorney fees incurred prior to and during the arbitration proceedings) and by the court or courts, including any appellate courts, in which the matter is tried, heard, or decided, including the court which hears any exceptions made to an arbitration award submitted to it for confirmation as a judgment (with respect to attorney fees incurred in such confirmation proceedings)."

Under ORS 20.083,

> "[a] prevailing party in a civil action relating to an express or implied contract is entitled to an award of attorney fees that is authorized by the terms of the contract or by statute, even though the party prevails by reason of a claim or defense asserting that the contract is in whole or part void, a claim or defense that the contract is unenforceable or *a claim or defense asserting that the prevailing party was not a party to the contract.*"

(Emphasis added.) Furthermore, pursuant to ORS 20.096(1),

> "[i]n any action or suit in which a claim is made based on a contract that specifically provides that attorney fees and costs incurred to enforce the provisions of the contract shall be awarded to one of the parties, the party that prevails on the

> claim shall be entitled to reasonable attorney fees in addition to costs and disbursements, without regard to whether the prevailing party is the party specified in the contract and *without regard to whether the prevailing party is a party to the contract.*"

(Emphasis added.) In plaintiffs' view, those provisions, taken together, demonstrate that BT can be charged with attorney fees in this case.

Defendants, for their part, contend that plaintiffs' understanding of the law is incorrect. In their view, "if a litigant is not a party to a contract that provides for attorney fees to the prevailing party, then attorney fees can never be awarded against that litigant. Being wrongfully sued for attorney fees does not make that litigant liable for attorney fees." We agree with defendants that, under the unusual circumstances presented in this case—where the prevailing plaintiff is a party to a contract but the losing defendant is not and never claimed to be—the agreement, ORS 20.083, and ORS 20.096 do not provide for attorney fees to be charged against the losing party. Neither of the statutes in question works to create liability for attorney fees under a contract against a party who was not alleged to be, and never claimed to be, a party to that contract. Thus, the trial court did not err.

"ORS 20.096 was enacted in 1971 to provide reciprocal rights to attorney fees for contracts containing one-sided attorney fee provisions." *King v. Neverstill Enterprises, LLC*, 240 Or.App. 727, 731, 248 P.3d 30 (2011). As we explained in *King*, early on we interpreted that statute to authorize an "award of attorney fees to a defendant who had prevailed in [an] action by establishing that he was not

a party to the contract that the plaintiff had sought to enforce against him." *Id.* at 732, 248 P.3d 30 (citing *Golden West Insulation v. Stardust Investment Corp.*, 47 Or.App. 493, 615 P.2d 1048 (1980)). We reasoned that an attorney fee award was appropriate because, had the plaintiff prevailed at trial, it would have been entitled to an award of fees against the defendant. *Golden West*, 47 Or.App. at 512, 615 P.2d 1048. Thus, early on the case law

> "essentially established a broad principle of reciprocity under ORS 20.096: *viz.*, if a plaintiff brings a claim against a defendant based on a contract that had an attorney-fee provision, and that provision would entitle the plaintiff to recover fees if the plaintiff prevailed, then the defendant against whom the claim was made is entitled to recover fees when the defendant prevails, without regard to the basis on which the defendant prevailed."

King, 240 Or.App. at 732, 248 P.3d 30. However, later cases undermined that broad reciprocity principle, holding that a defendant who prevailed in a contract action by asserting the contract was void or should be rescinded could not obtain fees under the contract. *Id.* at 732–33, 248 P.3d 30 (citing *Care Medical Equipment, Inc. v. Baldwin*, 331 Or. 413, 15 P.3d 561 (2000), and *Bodenhamer v. Patterson*, 278 Or. 367, 563 P.2d 1212 (1977)). "The legislature adopted ORS 20.083 in 2003 to overturn those cases and to reinstate the broad reciprocity principle for attorney-fee awards in contract actions involving contracts containing attorney-fee provisions." *Id.* at 733, 248 P.3d 30.

The text of ORS 20.083 "consists of two clauses—one operative and one explanatory." *A & E Security and*

Electronic Solutions v. Fortalesa, 253 Or.App. 448, 450, 290 P.3d 861 (2012) (citing *King*, 240 Or.App. at 734–35, 248 P.3d 30). The "operative clause conveys a broad entitlement to attorney fees under a contract when ORS 20.083 is applicable[.]" *Id.* (internal quotation marks omitted). The explanatory clause "identifies examples of circumstances in which it applies. That is, the operative clause applies 'even' in those circumstances, but not 'only in them[.]'" *Id.* at 451, 290 P.3d 861. The issue is whether, in enacting ORS 20.083, the legislature intended "the statute's operative clause to provide 'an award of attorney fees that is authorized by the terms of [a] contract,'" *id.* (brackets in *A & E Security and Electronic Solutions*), when the party from which fees are sought was a stranger to the contract. We conclude that it did not.

First, ORS 20.083 specifically refers to attorney fees "authorized by the terms of [a] contract." However, as noted, the parties to the contract are the original members of SPBC along with any other persons later admitted as members under the terms of the agreement. Nothing in the contract purports to authorize an award of fees in litigation against a losing defendant who did not claim to be, and who was not asserted to be, a party to that contract.[8]

Nonetheless, plaintiffs argue that BT's assertion, in its answer and counterclaims, that it was not a party to the contract but that it was entitled to attorney fees if it prevailed, itself gives rise to a liability for fees because the statutes provide for reciprocity. Plaintiffs are incorrect. A mere assertion of a reciprocal right to fees under ORS

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[8] We also note that, not only was BT never asserted to be a party to the contract, but the trial court also ultimately agreed with plaintiffs that Taggart never effectively transferred an interest in SPBC to BT.

20.083 does not itself authorize fees that would not otherwise be allowable under the contract and the statutes. The statutes are intended to ensure that, where a claim is made under a contract that would allow the prevailing party to receive fees, a party defending against that claim may also receive fees, even if that party prevails by asserting a defense that the contract does not control. *See A & E Security and Electronic Solutions*, 253 Or.App. at 455, 290 P.3d 861 (ORS 20.083 authorizes an award of fees when a party to a contract action prevails by obtaining rescission of the contract); *King*, 240 Or.App. at 731–32, 248 P.3d 30 (under ORS 20.083, defendant, who prevailed in contract action by establishing that plaintiff was not a party who could enforce the contract, was entitled to an award of fees). It does *not*, however, independently give rise to an entitlement to attorney fees in circumstances like those here—where the parties have agreed from the beginning that the losing defendant was not a party to the agreement containing the attorney fee provision. In this case, the trial court did not err in declining to award attorney fees against BT.

D. *Cross-appeal—Designation of prevailing parties*

In their remaining assignment of error on cross-appeal, plaintiffs contend that the trial court erred when it ruled that Emmert and Jehnke were not prevailing parties as to BT. In particular, as set forth above, the court ruled that "neither Terry Emmert and Keith Jehnke nor BT of Sherwood are prevailing parties with respect to each other." According to plaintiffs, "[a]s a matter of law, that ruling is in error. BT asserted counterclaims against Emmert and Jehnke, all of those claims were decided against BT; Emmert and Jehnke asserted counterclaims against BT, and a portion of those claims were decided in

their favor." Specifically, BT brought claims against Emmert and Jehnke for breach of fiduciary duty and declaratory judgment; Emmert and Jehnke, for their part, sought declaratory relief and damages for conspiracy to interfere with a prospective economic advantage. As Emmert and Jehnke point out, the court granted them declaratory relief, and dismissed BT's claims (along with Emmert and Jehnke's other claims) with prejudice. Thus, according to plaintiffs, the trial court should have considered Emmert and Jehnke's request for costs and fees against BT.

Even assuming that plaintiffs are correct that the trial court erred in failing to designate Emmert and Jehnke as prevailing parties with respect to BT,[9] in light of our other conclusions—in particular, our conclusion that no attorney fees may be assessed against BT and the trial court's clear exercise of discretion to deny costs between Emmert and Jehnke and BT (discussed below)—plaintiffs do not

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[9] We note that plaintiffs cite no authority in support of their contention that, in light of the claims raised between BT and Emmert and Jehnke, the court was required to designate Emmert and Jehnke as prevailing parties as a matter of law. *See* ORS 20.077(1) ("In any action or suit in which one or more claims are asserted for which an award of attorney fees is either authorized or required, the prevailing party on each claim shall be determined as provided in this section); ORS 20.190 (setting forth prevailing party fees); *Brennan v. La Tourelle Apartments*, 184 Or.App. 235, 243, 245, 245 n. 2. 56 P.3d 423 (2002) (conclud-ing that trial court was required to designate a prevailing party with respect to claims under ORS 90.255, but "express[ing] no opinion as to whether there is a need to designate a prevailing party regarding other kinds of claims"); *see also Beggs v. Hart*, 221 Or.App. 528, 537–38, 191 P.3d 747 (2008) (in a case under ORS 20.077, the court must determine the prevailing party for each claim).

identify any harm that they have suffered as a result of that error.

The only consequences that plaintiffs identify as flowing from the trial court's failure to designate them as prevailing parties with respect to BT are that the court also failed to award them costs or to consider their request for fees against BT. But, as we have explained, BT could not be charged with fees under the operating agreement and ORS 20.083 and ORS 20.096. Furthermore, with respect to costs, the trial court expressly exercised its discretion to deny costs, stating that it "relie[d] expressly on ORCP 68 B which grants the court discretion ('unless the court otherwise directs') vis a vis costs and disbursements."

ORCP 68 B provides:

> "In any action, costs and disbursements shall be allowed to the prevailing party unless these rules or any other rule or statute direct that in the particular case costs and disbursements shall not be allowed to the prevailing party or shall be allowed to some other party, *or unless the court otherwise directs.* If, under a special provision of these rules or another rule or statute, a party has a right to recover costs, such party shall also have a right to recover disbursements."

(Emphasis added.) "By giving a trial court authority to 'otherwise direct [ ],' ORCP 68 B empowers the court with discretion not to award costs and disbursements to a prevailing party. Thus, we review the trial court's decision to not award costs and disbursements for abuse of discretion." *AutoLend, IAP, Inc. v. Auto Depot, Inc.*, 170 Or.App. 135, 143, 11 P.3d 693 (2000), *rev. den.*, 332 Or. 240, 28 P.3d 1175 (2001) (brackets in *AutoLend, IAP, Inc.*). The

court did not abuse its discretion in declining to award costs in this case.[10]

Under those circumstances, the trial court's failure to designate Emmert and Jehnke as prevailing parties with respect to BT did not result in the denial of fees or costs to Emmert and Jehnke—they were not entitled to fees against BT in any event, and the trial court independently exercised its discretion to deny them costs. Thus, we conclude that this assignment of error does not provide a basis for remand. *See Barbara Parmenter Living Trust v. Lemon*, 345 Or. 334, 338–39, 194 P.3d 796 (2008) (declining to resolve whether trial court erred in designating a landlord as a prevailing party where "[t]he designation has not resulted in any harm to tenants").

On appeal, attorney fees and costs against Taggart reversed; otherwise affirmed. On cross-appeal, affirmed.

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[10] We reject plaintiffs' contention that the trial court was required to provide a more detailed explanation of its exercise of discretion to deny costs. The trial court properly cited ORCP 68 B as the source of its discretionary authority, and nothing in the court's explanation suggests that its exercise of discretion was based on a misunderstanding of the applicable law.